

NOTICE OF DECISION

Case File: T2-2019-12143
Permit: Lot of Record Verification
Applicant(s): Robert E. Schoepper
Owner(s): Robert E. Schoepper & Stephanie S. Schoepper
Location: Tax Lot adjacent to 29801 SE Lusted Rd., Gresham
Tax Lot 900, Section 18AA, Township 1 South, Range 4 E, W.M.
Tax Account #R994180880 Property ID #R342064
Zoning: Multiple Use Agriculture (MUA-20)
Overlays: N/A
Proposal Summary: The applicant requests a Lot of Record Verification for the subject property. The County will review the creation or reconfiguration of the subject property to verify that the creation or reconfiguration of the unit of land satisfied all applicable zoning and land division laws in effect on the date of its creation or reconfiguration.

Determination: The subject property (1S4E18AA – 00900) is a Lot of Record in its current configuration

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, November 15, 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 Aldo Rodriguez, Staff Planner at 503-988-4159 or at aldo.rodriguez@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: 
Aldo Rodriguez, Assistant Planner

For: Adam Barber,
Interim Planning Director

Date: Thursday, November 1, 2019

Instrument Number for Recording
Purposes: #1995-085174

Vicinity Map

N↑



Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.005 Lot of Record - Generally, MCC 39.3080 Lot of Record - Multiple Use Agriculture -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*

Conditions of Approval

1. Record pages 1 through 2 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

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 Tax Lot 900, Section 18AA, Township 1 South, Range 4 East, W.M. (the “subject property”). The subject property is located between 29801 and 29943 SE Carpenter Ln.

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 reconfiguring of the unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. If the unit of land met all the applicable zoning and land division laws in effect at the time, it may be determined to be a Lot of Record.

2.0 PROPERTY DESCRIPTION:

Staff: The subject property is located in rural East Multnomah County in the Multiple Use Agriculture – 20 (MUA-20) zone. The subject property is vacant and does not have any valid land use decisions or permits approving development on the property. No address has been assigned to the subject tax lot at this time.

3.0 GENERAL PROVISIONS:

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.

(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 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.*

4.0 LOT OF RECORD CRITERIA:

4.1 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**
- 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: To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

On September 3, 1993, the County issued a decision for land use case #LE 11-93 approving the creation of two Lots of Exception pursuant to the provisions of Multnomah County Code Chapter 11.15 (Exhibit B.5). LE 11-93 enabled the creation an approximately 7.564 acre property (currently identified as 29801 SE Lusted Road) and the approximately 2.307 acre subject property. Following the issuance of the decision, a warranty deed containing the adjusted property description for the 7.564 acre subject property was recorded on July 20, 1995 (Exhibit A.6). A new deed containing the adjusted property description for the subject property was recorded on August 24, 1995 (Exhibit A.8) which established the current configuration for the subject property.

The applicant submitted a recorded warranty deed from August 24, 1995 describing the subject property in its current configuration. (Exhibit A.8). In 1995, the zoning for the subject property was Multiple Use Agriculture – 20 (MUA-20), which had a minimum lot size of 20 acres, required frontage on a public road and a minimum front lot line length of 50 feet. (Exhibit B.4). According to the recorded survey submitted as (Exhibit B.7), the subject property has a front lot line length of 329.5 feet and abuts SE Lusted Road, a public street.

The current legal description for the subject property remains the same description in the August 24, 1995 warranty deed (Exhibit A.8) as the property owner has not changed since that time. Therefore, the creation of this approximately 2.307 acre parcel in 1995 satisfied all applicable zoning laws and land division laws at the time through the implementation of land use case #LE 11-93 and recording of the required documents included as (Exhibits A.6 – A.8 & B.7).

Based on the information discussed above, the creation of this parcel in 1995 satisfied all applicable zoning and land division laws at the time.

4.2 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.

Staff: The current zoning for the property is Multiple Use Agriculture – 20 (MUA-20), which has a twenty-acre minimum lot size, requirement of public or private street frontage and a minimum front lot line length of 50 feet. The subject property is an approximately 2.307 acre parcel, fronts onto the public road known as SE Lusted Road and has a front lot line length of approximately 329.05 feet (Exhibit B.7). While the parcel has less than the minimum lot size for a new parcel in the MUA-20 zone, it is a legally created parcel under finding 4.1 of this land use decision. *Criteria met.*

- 4.3 (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 subject property is vacant and there are no current land use decisions or permits approving a structure on the subject property. The Lot of Exception decision issued by the County (Exhibit B.5) granted permission to reduce the minimum lot size below the required 20 acre minimum in effect at that time. *Criteria met.*

- 4.4 (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: The legal configuration of the subject property was not created by the foreclosure of a security interest or a court decree. The legal configuration of the subject property is not an area of land described solely for assessment and taxation purposes. *Criteria met.*

5.0 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 T2-2019-12143 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	6.19.2019
A.2	11	Applicant Email Narrative	6.19.2019
A.3	10	Title Report for 1S4E18AA-00800	6.19.2019
A.4	10	Title Report for 1S4E18AA-00800 (Duplicate)	6.19.2019
A.5	2	Declaration of Trust Ownership recorded December 9, 1994	6.19.2019
A.6	2	Warranty Deed recorded July 20, 1995 as instrument #1995-85174	6.19.2019
A.7	7	Documents recorded July 20, 1995 as instrument #1995-85173 associated with land use case #LE 11-93	6.19.2019
A.8	4	Warranty Deed recorded August 24, 1995 as instrument #1995-102143	6.19.2019
A.9	1	Warranty Deed recorded June 1, 1979 in Book 1356, Page 305	6.19.2019
A.10	1	Warranty Deed recorded April 1, 1977 in Book 1168, Page 960	6.19.2019
A.11	28	Miscellaneous Documents	6.19.2019
'B'	#	Staff Exhibits	Date
B.1	2	County Assessment and Taxation Property Information 1S4E18AA-00800	6.19.2019
B.2	2	Pre-file/Pre-application Waiver	6.19.2019
B.3	1	Zoning Map for 1S4E18	6.19.2019
B.4	1	Zoning Ordinance adopted February 20, 1990 as Multnomah County Code Chapter 11.15	6.19.2019
B.5	11	Copy of Land Use case #LE 11-93	6.19.2019
B.6	1	Applicants Instruction for Finishing a Property Line Adjustment	6.19.2019
B.7	1	Survey recorded March 3, 1995 as document no. 54436	6.19.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	7.17.2019
C.2	3	Opportunity to Comment	8.5.2019
C.3	7	Administrative Decision	10.31.2019