
NOTICE OF DECISION

Case File: T2-2019-12241 **Permit:** Property Line Adjustment

Applicant: James R. Ellis

Location:

Tract #1 35611 SE Mac Innes Rd, Corbett
Tax Lot 300 & 1400, Section 03/03B, Township 1 South, Range 4 East, W.M.
Tax Account #R994030210 & R994030250 **Property ID** #R341208 & R341211
Zoning: Exclusive Farm Use (EFU) & Commercial Forest Use – 4 (CFU-4)
Property Owners: Marjorie Turner & James Ellis

Tract #2 35801 SE Hurlburt Rd, Corbett
Tax Lot 600, Section 03D, Township 1 South, Range 4 East, W.M.
Tax Account # 994030340 **Property ID** #R341219
Zoning: Rural Residential
Property Owners: David Ray & Laci Ray

Proposal Summary: The applicant is proposing a property line adjustment to transfer approximately 40,205.88 sq. ft. (0.923 of an acre) from Tract #2 to Tract #1. This application is to re-authorize the property line adjustment approved in 2005 but not implemented prior to expiration of the land use approval.

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 Friday, January 3, 2020 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.liu@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.

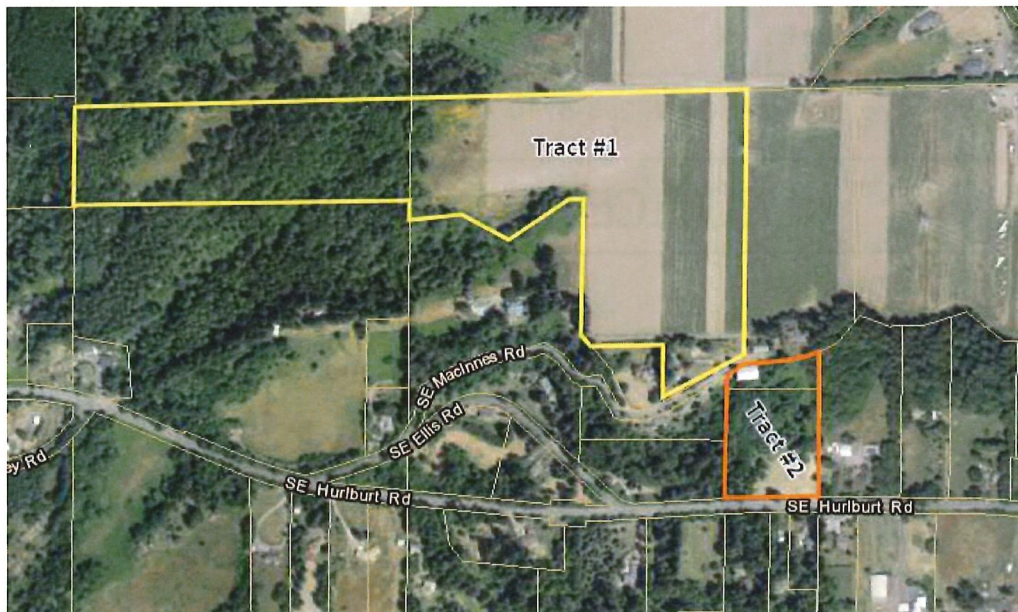
Issued By: 
Lisa Estrin, Senior Planner

For: Adam Barber
Interim Planning Director

Date: Friday, December 20, 2019

Vicinity Map

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

Applicable Approval Criteria: Multnomah County Code (MCC):

Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3050 Lot of Record – Commercial Forest Use – 4, MCC 39.3070 Lot of Record – Exclusive Farm Use, MCC 39.3090 Lot of Record – Rural Residential

Property Line Adjustment - EFU: MCC 39.4225 Review Uses, (I) Lot Line Adjustment, MCC 39.4245 Dimensional Requirements and Development Standards, MCC 39.4255 Lot Line Adjustment; Property Line Adjustment, and MCC 39.4260 Access

Property Line Adjustment – RR: MCC 39.4365 Review Uses, (C) Property Line Adjustment, MCC 39.4375 Dimensional Requirements and Development Standards, MCC 39.4380(B) Property Line Adjustment, MCC 39.4395 Access

MCC 39.9300 Property Line Adjustment

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at <http://multco.us/landuse/zoning-codes> under the link *Chapter 39 – 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. **Permit Expiration** – This land use permit shall expire as follows:

- a. The permit **shall expire two (2) years after the date of the final decision**, unless new deeds are recorded by Turner/Ellis for Tract #1 and the Rays for Tract #2. [MCC 39.1185(A)]

- i. For the purposes of 1.a, expiration of an approval means that a new application is required to reauthorize the property line adjustment. For land divisions and property line adjustments, “established” means the final deeds or plat has been recorded with the county recorder.

Note: The property owners 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.

2. The property owner(s) or their representative(s) shall:
 - a. Ensure the property line adjustment is completed following the procedures provided in the “Surveyor’s Instructions for Finishing a Property Line Adjustment” and the “Applicant’s Instructions for Finishing a Property Line Adjustment” as listed in Exhibits B.9 and B.10. [MCC 39.9300(D)]
3. **Prior to Land Use Planning sign-off** of the new deeds and legal description for the completion of the Property Line Adjustment, the property owner(s) or their representative(s) shall:
 - a. Obtain all necessary land use permits for the agricultural building that will be relocated from tax lot 1S4E03D – 00600 (35801 SE Hurlburt Rd) to tax lot 1S4E03 -00300 (35611 SE MacInnes Rd). [MCC 39.4360(F)(8)]
4. **Prior to recording the deeds**, the property owner(s) or their representative(s) shall:
 - a. Pay a fee and submit copies of the deeds to be recorded, and metes and bounds legal descriptions to Multnomah County Land Use Planning for verification that the adjusted properties conform to the Tentative Plan Map (Exhibit A.2).

There shall be two draft deeds and two draft metes and bound legal descriptions as follows:

- i. **Enlarging Turner/Ellis Property:** The draft deed and the metes and bounds legal description for the Turner/Ellis property with its new enlarged metes and bounds legal description that consolidates the transferred unit of land into their legal parcel.
 - a) The legal description shall include the words: This new legal description is to complete the property line adjustment approval, T2-2019-12241, thus enlarging the original property to a 23.72-acre parcel.
 - ii. **Reducing Rays Property:** The draft deed and the metes and bounds legal description for the Rays property with new reduced metes and bounds legal description as one description.
 - a) The legal description shall include the words: This new legal description is to complete the property line adjustment approval, T2-2019-12241 reducing the original property to a 3.53-acre parcel.
- b. Each submitted metes and bounds legal description to be reviewed shall have an area on the page below the legal description that is a minimum of two inches by five inches to accommodate County Land Use Planning’s approval stamp.

- c. Multnomah County Land Use Planning must approve these documents prior to their recording. If the submitted documents conform to the approved Tentative Plan Map and zoning requirements staff will approve the draft deeds and legal descriptions [MCC 39.9300].
5. **At the time of recording**, the property owner(s) or their representative(s) shall record the deeds with the stamped metes and bound legal description attached as an exhibit in this order:
 - a. **Enlarging the Turner/Ellis Property:** The deed and new legal description shall be recorded that describes the authorized enlarged Turner/Ellis 23.72 acre parcel.
 - b. **Reducing the Rays Property:** The deed and new legal description shall be recorded that describes the authorized smaller 3.53 acre parcel.

The recordation of the deeds in this order will ensure that no new unauthorized parcel is created [MCC 39.9300(A)]. These new deeds and legal descriptions shall be recorded within two years of this decision becoming final as outlined by Condition No. 1 above.

6. The transferred 0.923 of an acre unit of land shall not exist as a separate unit of land or tax lot after the property line adjustment is completed. No additional lot or parcel shall be created through this property line adjustment process. If this occurs, it shall be a violation of this approval and shall be resolved prior to the expiration of this case [MCC 39.9300(A)].
7. Within 30 days of recording the required deeds (see Condition No. 5), the applicant or their representative shall submit a copy of the recorded Turner/Ellis deed and the recorded Rays deed to Land Use Planning. [MCC 39.9300(D)]
8. Tract #1, consisting of tax lots 1S4E03B – 01400 and 1S4E03 – 00300, shall only be eligible for one primary dwelling. The addition of Rural Residential zoned property to the EFU zoned parcel contained in 1S4E03 – 00300 shall not be construed as containing an extra dwelling right. Prior to final approval of the new deeds and new legal descriptions (See Condition No. 4), the property owners of the Turner/Ellis parcel shall record a restrictive covenant against the property stating that the parcel is permitted to have only one primary dwelling unit. [MCC 39.4255 and MCC 39.4380]

Note: Once this decision is final, the property owner(s) or their representative(s) shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to..." Be ready to demonstrate compliance with the conditions.
2. Contact Lisa Estrin, Senior Planner, at 503-988-0167 or lisa.m.estrin@multco.us, for an appointment for review of the conditions of approval and for staff to review the draft deeds, and new metes-and-bound descriptions. At the time of this review, Land Use Planning will collect additional fees for the review.

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 proposing a property line adjustment to transfer approximately 40,205.88 sq. ft. (0.923 of an acre) from Tract #2 to Tract #1. This application is to re-authorize the property line adjustment approved in 2005 but not fully implemented prior to expiration of the land use approval.

2.0 Property Description & History:

Staff: In 2005, the County approved a property line adjustment (T2-05-065) application between Tract #1 and Tract #2 to transfer an existing outbuilding from Tract #2 to Tract #1. The County in a Lot of Record Verification application (T2-2018-11080) found that the completion of the property line adjustment was not completed in a timely fashion and the property line adjustment decision expired.

Tract #1 consists of two tax lots, 1S4E03B – 01400 and 1S4E03 - 00300 which combined are 34.793 acres in size. Tax lot 1S4E03B – 01400 is zoned Commercial Forest Use – 4 (CFU-4) and is currently vacant. Tax lot 1S4E03 – 00300 is zoned Exclusive Farm Use (EFU). Tax records for tax lot 1S4E03 – 00300 show a single family dwelling constructed in the year 1930. Upon completion of the property line adjustment Tract #1 will contain the 1930 single family dwelling and a 3,840 sq. ft. farm building transferred from Tract #2.

Tract #2 is a single parcel known as 1S4E03D – 00600 and is zoned Rural Residential (RR). The tract contains an existing 3,840 sq. ft. farm building and a new single family dwelling. Once the property line adjustment is completed in a timely fashion, Tract #2 will only contain the single family dwelling.

3.0 General Code Provisions:

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: At present, the property line adjustment approved in 2005 was not properly implemented in compliance with the approval. As the approval expired, the transfer of 0.923 of an acre of land from the parcel known as tax lot 1S4E03D – 00600 to tax lot 1S4E03 – 00300 is a problem. This property line adjustment application will re-authorize the property line adjustment and its proper implementation will correct the issue.

3.2 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: Tract #1 consists of two tax lots: 1S4E03B – 01400 and 1S4E03 – 00300. Tax lot 1S4E03B – 01400 is 12 acres in size and the unit of land was created prior to zoning in 1945 (Exhibit B.4). This deed predates the implementation of zoning and land division regulations in Multnomah County. As such the unit of land known as tax lot 1S4E03B – 01400 is lawfully established. A 22.79 acre portion of Tax lot 1S4E03 – 00300 was found by the Hearings Officer in land use case T2-2018-11080 to have been lawfully established in 1981. The 22.79 acres exist north of MacInnes Road. The portion of tax lot 1S4E03 – 00300 that is south of the road was found to be not a part of the lawfully established parcel by the Hearings Officer in the same decision.

Tract #2 is a single 4.453 acre parcel that was created by deed in June 1945. The deed was recorded in Book 943 on Page 309. This deed predates the implementation of zoning and land division regulations in Multnomah County. A 0.923 of an acre portion of the legal parcel is contained in tax lot 1S4E03 - 00300 and the 3.53 acres of land identified as tax lot 1S4E03D - 00600 is the remaining area of the lawful 4.453 acre parcel. As such, the 4.453 acre parcel established in 1945 is a Lot of Record.

3.3 (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: Tract #1 is zoned CFU-4 and EFU. Tract #2 is zoned RR. None of these zones are part of an “acknowledged unincorporated community”. *Criterion not applicable at this time.*

3.4 MCC 39.3050 LOT OF RECORD – COMMERCIAL FOREST USE-4 (CFU-4).

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 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.**

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4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, SRC, R-10, GGA-40), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

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MCC 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE (EFU).

(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.

* * *

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g., MUA-20, RR, RC, SRC, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

* * *

Staff: Tract #1 consists of two parcels which are different zones. The 12 acre parcel is zoned Commercial Forest Use – 4 (CFU-4). The 22.79 acre parcel is zoned Exclusive Farm Use. Both zones have aggregation requirements. Both parcels were created prior to 1990 and neither were created by a plat. In land use decision, T2-2018-11080, the Hearings Officer found that the two parcels were in the same ownership on February 20, 1990 (Exhibit B.6). As such, the 12 acre parcel is aggregated with the 22.79 acre parcel.

3.5 MCC 39.3050 Lot of Record (CFU-4)

(A)(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(c) Disaggregation of a Lot of Record for consideration of a new template or heritage tract dwelling may be allowed subject to the standards in (E) below.

Staff: The 12 acre CFU-4 zoned parcel is currently vacant. The 12 acre parcel was created before zoning so a Hearing Authority did not grant approval for its creation at less than 19 acres in size. The applicant is not applying for new template or heritage tract dwelling at this time. The 12 acre CFU-4 parcel was not granted an exception to the aggregation requirement in MCC 39.3050(A)(2). *The 12 acre parcel remains aggregated to the EFU zoned property.*

3.6 MCC 39.3070 Lot of Record (EFU)

(A)(4) Exception to the standards of (A)(2) above:

(a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

Staff: The 22.79 acre EFU zoned parcel was reconfigured via the land use approvals LD 3-81 (Land Division) and CU 4-81 (Conditional Use) (Exhibit B.6). The 22.79 acre parcel is not disaggregated from the CFU-4 zoned parcel through this exception as it was not the lot created through the conditional use permit. Tax lot 1S4E03D – 00900 was the approved substandard parcel established by CU 4-81. *The 22.79 acre EFU zoned parcel remains aggregated to the 12 acre CFU-4 zoned unit of land.*

3.7 MCC 39.3050 Lot of Record (CFU-4)

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

MCC 39.3070 Lot of Record (EFU)

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The 12 acre parcel and the 22.79 acre parcel combined are a single 34.79 acre Lot of Record. The minimum lot size for both the EFU and CFU-4 zone is 80 acres, so the Lot of Record is less than the minimum lot size for new parcels in the zone. The Lot of Record has a front lot line length of 361+/- feet. Both the CFU-4 and the EFU zones have a minimum front lot line length of 50 ft. [MCC 39.4120(C) and MCC 39.4245(C)]. The Lot of Record fronts onto the public street known as MacInnes Road. *Though the Lot of Record is substandard to the minimum lot size in the EFU and CFU-4 zones, it may be occupied by any allowed use, review use or conditional use provided in complies with all requirements.*

3.8 MCC 39.3050 Lot of Record (CFU-4)

MCC 39.3070 Lot of Record (EFU)

(D) The following shall not be deemed 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) A Mortgage Lot.**
- (4) An area of land created by court decree.**

Staff: As discussed above, the 34.79 acre Lot of Record consists to two legal parcels. The Lot of Record is contained within two tax lots for assessment and taxation purposes only. The tax lots 1S4E03B – 01400 and 1S4E03 – 00300 contain the 2 legal parcels.

Neither the 12 acre parcel nor the 22.79 acre parcel were created by foreclosure. Neither parcel constitute a mortgage lot. The two parcels were not created via court decree.

The two parcels combined (12 acre plus 22.79 acre parcels) are a Lot of Record.

3.9 MCC 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

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(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 39.4395, may be occupied by any allowed use, review

use or conditional use when in compliance with the other requirements of this district.

Staff: Tract #2 consists of 4.453 acres of land in the RR zone. The minimum lot size to create a new parcel in the RR zone is 5 acres [MCC 39.4375(A)]. Tract #2 meets the minimum lot size for the zone. The Lot of Record has a 366+/- ft. front lot line length adjacent to the public road known as SE Hurlburt Road (Exhibit A.2). The RR zone has a minimum front lot line length of 50 feet. The Lot of Record may be occupied by any allowed use, review use or conditional use provided the use complies with all other requirements. *Criterion met.*

3.10 MCC 39.3090 LOT OF RECORD (RR)

(C) Except as otherwise provided by MCC 39.4380, 39.4385, 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 has applied for a property line adjustment pursuant to MCC 39.4380. Provided the land transfer via the property line adjustment meets all of the applicable criteria, the parcel will remain a Lot of Record.

3.11 MCC 39.3090 LOT OF RECORD (RR)

(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: Tract #2 is a single 4.453 acre parcel that was created by deed in June 1945. The deed was recorded in Book 943 on Page 309. It is a Lot of Record. Tract #2 is not an area of land described for taxation purposes only. It was not created by a foreclosure or court decree. *Tract #2 is a Lot of Record.*

4.0 Exclusive Farm Use Approval Criteria:

4.1 MCC 39.4225 REVIEW USES.

(I) Lot Line Adjustment pursuant to the provisions of MCC 39.4255.

Staff: The applicant has requested approval of a lot line adjustment or property line adjustment. The proposal has met the criteria listed in MCC 39.4255.

4.2 MCC 39.4245 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

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(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

*** * ***

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.

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Staff: Tract #1 contains an existing single family dwelling that was constructed in 1930 based on the tax records (Exhibit B.1). The dwelling is approximately 28 to 30 feet from the edge of the MacInnes right of way (front lot line) and, at least, 35 feet from the western side property line. The house is over 1,000 feet to the south of the rear property line and over 200 feet from the eastern side property line. The house meets the side and rear yard requirement of the zone. The MacInnes right-of-way is currently only 40 feet wide. The County’s standard for a local right-of-way is 50 feet. Since no development is proposed at this time that will create a transportation impact, MCC 39.4245(D) would increase the minimum front yard to 40 feet for any new development. As the house was constructed prior to zoning its location to the front lot line is nonconforming to the required 40-ft front yard requirement.

The proposed property line adjustment will transfer an existing agricultural building from Tract #2 (RR zoned) to Tract #1 (EFU zoned). The existing agricultural building was constructed as a bulb shed prior to 1955 before the County commenced zoning. The building is immediately adjacent to or on the front lot line. As the agricultural building was constructed prior to zoning its location to the front lot line is nonconforming to the required 40-ft front yard requirement. The portion of the agricultural building that is taller than 30 inches in height is 25 feet to the east of the western side property line and over 200 feet from the eastern property line. These dimensions will not change with the property line adjustment. After the property line adjustment is completed, the rear property line will be 31 feet from the buildings rear property line. Tract #1’s front lot line length will increase from 361 feet to 436 feet as the tract will have road frontage on either side of MacInnes. *The adjusted Tract #1 will meet the dimensional requirements, as required, after the completion of the property line adjustment.*

Tract #2 has a newly constructed single family dwelling in the Rural Residential (RR) zone. The yard requirements for the RR zone are the same as for the EFU zone. The applicant’s plans at the time of building permit sign off was found by Land Use Planning to meet the minimum yard requirements for the RR zone. Provided the house was constructed as approved, the minimum yard requirements will remain in compliance with the rear yard being reduced by 31 feet. The dwelling will remain at least 200+/- feet from the rear property line. *The adjusted Tract #2 will meet the dimensional requirements after completion of the property line adjustment.*

5.0 Rural Residential Approval Criteria:

5.1 MCC 39.4365 REVIEW USES.

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 39.4380.

Staff: The applicant has requested approval of a lot line adjustment or property line adjustment. The proposal has met the criteria listed in MCC 39.4380.

5.2 **MCC 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

* * *

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

* * *

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: Please see Section 4.2 for the findings on minimum yard requirements. *Criteria met.*

6.0 **Lot Line Adjustment Approval Criteria (EFU):**

6.1 **MCC 39.4255 LOT LINE ADJUSTMENT; PROPERTY LINE ADJUSTMENT.**

(A) Pursuant to the applicable provisions in MCC 39.9300, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

(1) All dwellings that were situated on the same lot prior to the adjustments must remain together on the reconfigured lot; and

(2) 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; and

(b) If the properties abut a street, the required access requirements of MCC 39.4260 are met after the relocation of the common property line; and

(3) The reconfigured lot areas will each:

(a) Be a minimum of 80 acres, or

(b) Retain the same lot area that existed prior to the exchange.

Staff: Tract #1 has one existing single family dwelling constructed in 1930. Tract #2 has a newly constructed single family dwelling. Each dwelling will remain on its respective parcel after the completion of the property line adjustment.

As discussed under Section 4.2 above, the agricultural building being transferred from Tract #2 to Tract #1 will have a 30-ft rear yard as required by both the EFU and RR zones. Both tracts will maintain their minimum front lot line length as discussed in Section 4.2 above. Both tracts will maintain over 50 feet of street frontage as shown in Exhibit A.2 and as required by MCC 39.4260.

The 22.79 acre EFU zoned parcel in Tract #1 will increase in size to 23.716 acres, but the additional 0.926 of an acre being transferred to the parcel is in the Rural Residential zone.

The EFU zoned portion of Tract #1 will not increase in square footage, hence meeting the sub-part(3)(b) above.

The addition of Rural Residential zoned property to Tract #1 shall not be construed as containing an extra dwelling right for Tract #1. The property owners shall record a restrictive covenant against the deed to the property stating that the unit of land is permitted to have only one primary dwelling unit (see Exhibit B.5). This covenant shall not preclude the owner's ability to apply for additional dwellings as allowed in the EFU zone such as Temporary Health Hardship or Accessory Farm Help dwellings.

Criteria met.

5.0 Property Line Adjustment Criteria (RR) :

5.1 MCC 39.4380 ... AND PROPERTY LINE ADJUSTMENTS.

* * *

(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 39.4395 are met after the relocation of the common property line;**
- and**

(2) At least one of the following situations occurs:

- (a) The lot or parcel proposed to be reduced in area is larger than 5 acres prior to the adjustment and remains 5 acres or larger in area after the adjustment, or**
- (b) The lot or parcel proposed to be enlarged in area is less than 10 acres in area prior to the adjustment and remains less than 10 acres in area after the adjustment.**

Staff: As discussed in Sections 3.2 through 3.11, Tract #1 and Tract #2 are Lots of Record that are contiguous to each other (Exhibit A.2). Presently, Tract #1 and #2 both contain an existing single family dwelling as discussed in Sections 2.0 above. A restrictive covenant will be required to ensure that Tract #1 will not be able to obtain a second primary dwelling after the recordation of the property line adjustment as specified in Condition No. 8.

As discussed in Section 4.2 above, the buildings on Tract #1 and Tract #2 will comply with all minimum yard requirements and have front lot line lengths of over 50 feet as required by MCC 39.4375(C) and MCC 39.4245(C). Both Tract #1 and Tract #2 will maintain over 50 feet of road frontage. Tract #1 is adjacent to MacInnes Road. Tract #2 will have road frontage on Hurlburt Road.

Tract #2 is zoned RR and is proposed to be reduced in area from 4.453 to 3.53 acres. Tract #2 will not be eligible for further division after the proposed reconfiguration. Additionally,

the property owners of Tract #1 will be required to record a covenant against it stating that though it is split zoned, it is only eligible for one primary dwelling.

The overall parcel size of Tract #1 will increase through the addition of 0.923 of an acre to it. The overall size of Tract #1 will increase from 34.79 acres to 35.713 total. The parcel contained in Tax lot 1S4E03 – 00300 will increase from 22.79 to 23.713 acres but will not be eligible for division after the exchange as the RR portion of the parcel will be less than 5 acres.

Criteria met.

6.0 Additional Property Line Adjustment Criteria

6.1 MCC 39.9300 PROPERTY LINE ADJUSTMENT.

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**
- (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**
- (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the base zone; and**
- (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

Staff: Tract #1 currently consists of two parcels that are aggregated together due to the EFU/CFU-4 Lot of Record requirements. Tract #2 consists of one RR zoned parcel. The current EFU zoned parcel will have 0.923 of an acre of RR zoned land added to it. A condition of approval has been included with this decision that no additional parcels be created from any parcel by the property line adjustment. In addition, a covenant will be required prohibiting more than one dwelling on the parcel contained in tax lot 1S4E03 – 00300 so that the Lot of Exception provisions contained in the RR zone cannot be utilized.

Tract #1 is owned by Marjorie Turner & James Ellis. Tract #2 is owned by David Ray & Laci Ray. All four property owners have consented in writing to the proposed property line adjustment (Exhibit A.1 and A.10).

As discussed in Sections 4.1 through 6.1, the proposed property line adjustment meets the approval criteria listed in the EFU and RR zones. The applicant has followed the procedures and forms for the property line adjustment as required by the Planning Director.

Criteria met.

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the property line adjustment transferring the farm building from tax lot 1S4E03D – 00600 to 1S4E03 – 00300 in the EFU and RR zones. This approval is subject to the conditions of approval established in this report.

8.0 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 T2-2019-12241 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Property Line Adjustment Application Form	7.11.2019
A.2	1	Tentative Plan Map for Property Line Adjustment	7.11.2019
A.3	12	T2-05-065 Property Line Adjustment Decision dated August 3, 2005	7.11.2019
A.4	3	Warranty Deed transferring ownership from J.R. Ellis and P. Ellis to the The Ellis Family Revocable Living Trust recorded 9/06/2005 (Legal is for 10 acres)	7.11.2019
A.5	2	Statutory Warranty Deed transferring ownership from Ruth M Smith Revocable Living Trust to D.C. Maier and CJ Maier recorded on 07/20/2007 (R341219)	7.11.2019
A.6	1	Survey 60048 filed August 9, 2006 with Portion of Parcel 2 highlighted	7.11.2019
A.7	4	Bargain and Sale Deed transferring from R.M. Smith Revocable Living Trust to J.R. Ellis and M.R. Turner recorded on 12/29/2009 (Legal is for 23.716 acres)	7.11.2019
A.8	1	Survey 60048 filed August 9, 2006 with Parcel 1 and a Portion of Parcel 2 highlighted	7.11.2019
A.9	5	Recording Cover Sheet recorded on 12/28/2018 for a Restrictive Covenant & Restrictive Covenant & Exhibit A Legal Description	7.11.2019
A.10	1	Revised Property Line Adjustment Application Form	8.20.2019
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E03 – 00300 (Tract 1)	7.11.2019
B.2	2	A&T Property Information for 1S4E03B – 01400 (Tract 1)	7.11.2019
B.3	2	A&T Property Information for 1S4E03D – 00600 (Tract 2)	7.11.2019
B.4	1	Parcel Record Card for R994030250 (1S4E03B – 01400)	12.16.2019
B.5	2	Restrictive Dwelling Covenant	12.16.2019
B.6	15	T2-2018-11080 Hearings Officer’s Decision dated June 26, 2019	12.16.2019

'C'	#	Administration & Procedures	Date
C.1	1	Incomplete Letter	8.10.2019
C.1	1	Complete Letter (Day 1 – 8/20/2019)	9.06.2019
C.2	3	Opportunity to Comment	11.29.2019
C.3	16	Administrative Decision	