

NOTICE OF DECISION

Case File: T2-2019-12608

Permit: Lot of Record Verification

Applicant(s): Joseph Rayhawk **Owner(s):** Joseph & Shelley Rayhawk

Location: 15248 NW Germantown Road
Tax Lot 800, Section 08D, Township 1 North, Range 1 West, W.M.
Tax Account #R961080160 Property ID #R323981

Zoning: Exclusive Farm Use (EFU)

Overlays: Significant Environmental Concern – wildlife habitat (SEC-h); Streams (SEC-s);
Geologic Hazards (GH)

Proposal Summary: The Applicant requests a Lot of Record Verification for the subject property. This decision will determine if the current configuration of the subject property met the zoning and land division laws at the time of creation or reconfiguration. The application does not propose any development; hence, a GH, SEC-h, and/or SEC-s permit are not necessary.

Determination: The subject property (1N1W08D -00800) 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 January 30, 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:



Chris Liu, Planner

For:

Carol Johnson, AICP
Planning Director

Date:

Thursday, January 16, 2020

Vicinity Map

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Applicable Approval Criteria:

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – Exclusive Farm Use

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*

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 1N1W08D - 00800 (the “subject property”). The subject property is located adjacent to NW Germantown Road and identified as 15248 NW Germantown Road.

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 West Unincorporated Multnomah County in the Exclusive Farm Use (EFU) zone. The subject property is 33.737 +/- acres and is outside the Urban Growth Boundary, near the border between Multnomah County and Washington County.

As discussed in section 4.0 below, the County’s Lot of Exception process and approval of two subsequent Exempt Minor Partitions implementing a land division of the subject property’s parent parcel created and reconfigured the subject property in 1979-1982.

3.0 GENERAL PROVISIONS:

3.1 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.

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:

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.

In December of 1979, the County made an administrative decision related to Land Use Case #LE 4-80 on a 36.72 +/- acre parcel (the “parent parcel”) in the Multiple Use Agriculture – 20 (MUA-20) zone. In the decision, the County authorized the creation of a 34.194 acre parcel, now the subject property, and a 2.002 +/- acre substandard ‘Lot of Exception’ (15036 NW Germantown).

The subject property was created in 1981 through the recording of a new deed (Exhibit A.13) following the County’s approval of an Exempt Minor Partition that implemented Land Use Case #LE 4-80 (Exhibit B.3). As stated above, Land Use Case #LE 4-80 approved the division of the subject property’s parent parcel into a 34.194 acre parcel and a 2.002 +/- acre parcel. In 1982, the County approved a second Exempt Minor Partition to adjust the common property

line between the subject property and the 2.002 +/- property (Exhibit B.4). The common property line adjusted in 1982 between the two parcels remains in the same location as shown on the approved Exempt Minor Partition (Exhibit B.4). Through the approval of case #LE 4-80 and the 1981 and 1982 Exempt Minor Partitions, the County verified that the subject property was in full compliance with all zoning minimum lot size, dimensional standards, and access requirements at that time.

As stated above, in 1981, the County implemented case #LE 4-80 through the approval of an Exempt Minor Partition (Exhibit B.3). In 1982, the County approved a second Exempt Minor Partition to allow the equal area adjustment of the common property line between the subject property and the 2.002 +/- property (Exhibit B.4) utilizing the LE 4-80 decision. The common property line adjusted in 1982 remains in the same location as shown on the approved Exempt Minor Partition (Exhibit B.4). Through the approval of case #LE 4-80 and the 1981 and 1982 Exempt Minor Partitions, the County verified that the subject property satisfied all applicable land division laws at that time.

2008 Circuit Court Judgement

In 2008, as part of a quiet title action, a Circuit Court judgement clarified the western property line boundary between the former parent parcel (now the subject property) and the adjoining property to the west identified as 15610 NW Germantown Road, also known as tax lot 1N1W08C - 00500 ("TL 500") (Exhibit B.3). This clarification resulted in a corrected property size description of 33.737 +/- acres for the subject property. As part of its Findings of Fact and Conclusions of Law, the Court found that the relocation of the property line occurred sometime between 1936 and 1956 (Exhibit B.3).

Because the Court concluded that the relocation of the side property line of the subject property pre-dated zoning, which first came into effect after 1956, the Court decision did not create or reconfigure the property in violation of any zoning or land division laws, and therefore does not impact this Lot of Record determination.

Following the Court clarification of the boundary of the subject property's parent parcel, the current configuration of the subject property continues to comply with the County's 1979-1982 approvals.

Based on the information discussed above, the creation and reconfiguration of this parcel in 1979-1982 satisfied all applicable zoning minimum lot size, dimensional standards, and access requirements and land division laws at the time.

4.2 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.

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:

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.

(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 applicant provided a chain of title for the subject property and adjacent properties to demonstrate ownership on February 20, 1990 (Exhibit A.9, A.11, A.13, and A.15). Based on the provided chain of title, the owners of the subject property on February 20, 1990 (American Equities Inc.) did not own any contiguous parcel(s) or lot(s). Therefore, the subject property qualifies as a single approximately 33.737 +/- acre Lot of Record. *Criteria met.*

- 4.3 (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 EFU zone has a minimum lot size to create a new parcel of 80 acres, a requirement for a 50-ft front lot line and road frontage (MCC 39.4245, 39.4260). The subject parcel has a front lot line in excess of 50-ft and is adjacent to NW Germantown Road, so it also meets the access requirement. The subject 33.737 +/- acre parcel is substandard to the EFU minimum lot size, but as allowed in (C) above it may be occupied by any allowed use, review use or condition use subject to other requirements.

- 4.4 (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: The subject parcel was created and reconfigured through the approval of Lot of Exception case #LE 4-80 and two Exempt Minor Partitions in 1979-1982 (Exhibit B.2 – B.4). Therefore, the subject property is not an area of land created by the foreclosure of a security interest. The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes nor is it a mortgage lot.

The subject property is not an area of land created by a court decree. As described in section 4.1, a circuit court decision clarified the location of the westernmost side property line of the subject property's parent parcel, a parcel created prior to zoning regulations (Exhibit B.5). The Court's clarification did not create an area of land and it has no effect on the Lot of Exception and land division process used to create the subject property in 1979-1982. *Criteria met.*

5.0 PUBLIC COMMENT:

5.1 Comments from neighbor Steve Baker.

Staff: Baker requested clarification as to the purpose of the Lot of Record Verification. Baker did not want the decision to affect his property or allow the construction of an additional home.

6.0 EXHIBITS:

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

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 T2-2019-12608 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	General Application Form	10.24.2019
A.2	3	Cover Page and Table of Contents	10.24.2019
A.3	3	Applicant Narrative	10.24.2019
A.4	3	Tax Maps for the subject property	10.24.2019
A.5	1	Tax Assessor Map for 1N 1W 8C	10.24.2019
A.6	8	General Judgement of Quiet Title and Money Award	10.24.2019
A.7	4	Release of Lien	10.24.2019
A.8	6	Property Detail Report for 15248 NW Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.9	76	Chain of Title for 15248 NW Germantown Rd.	10.24.2019
A.10	10	Property Detail Report for 15610 NW Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.11	31	Chain of Title for 15248 NW Germantown Rd.	10.24.2019
A.12	6	Property Detail Report for 15036 NW Old Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.13	15	Chain of Title for 15036 NW Old Germantown Rd.	10.24.2019
A.14	6	Property Detail Report for 14810 NW Old Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.15	6	Chain of Title for 14810 NW Old Germantown Rd.	10.24.2019
'B'	#	Staff Exhibits	Date
B.1	2	County Department of Assessment & Taxation Property Information	10.24.2019
B.2	36	Land Use Case #LE 4-80	10.24.2019
B.3	4	Exempt Minor Partition approved January 12, 1981 that implemented Land Use Case #LE 4-80	11.08.2019
B.4	3	Exempt Minor Partition approved October 5, 1982 (related to a Lot Line Adjustment)	11.08.2019
B.5	6	Findings of Fact and Conclusions of Law	11.08.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	11.15.2019
C.2	2	Opportunity to Comment	12.30.2019
C.3	8	Administrative Decision	01.16.2020
'D'	#	Comments Received	Date
D.1	2	Comments from neighbor Steve Baker	01.12.2020