

NOTICE OF DECISION

Case File: T2-2022-15602

Permit: Lot of Record Verification

Applicants: Robert Rosenthal **Owners:** Robert & Denise Rosenthal

Location: **Address:** 7349 SE 252nd Avenue, Gresham **Map, Tax Lot:** 1S3E23B -00901
Tax Account #R092605530 **Property ID #**R118928

Base Zone: Multiple Use Agriculture – 20 (MUA-20)

Overlays: None

Proposal Summary: The applicant is requesting a Lot of Record Verification for the above property. A Lot of Record Verification determines that a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County's aggregation requirements.

Determination: The subject property known as 1S3E23B -00901 is not a Lot of Record in its current configuration.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, June 9, 2022 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 by contacting the case planner. Copies of all documents are available at the rate of \$0.40/per page. For further information, contact case planner Lisa Estrin at 503-988-0167 or via email at lisa.m.estrin@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: _____

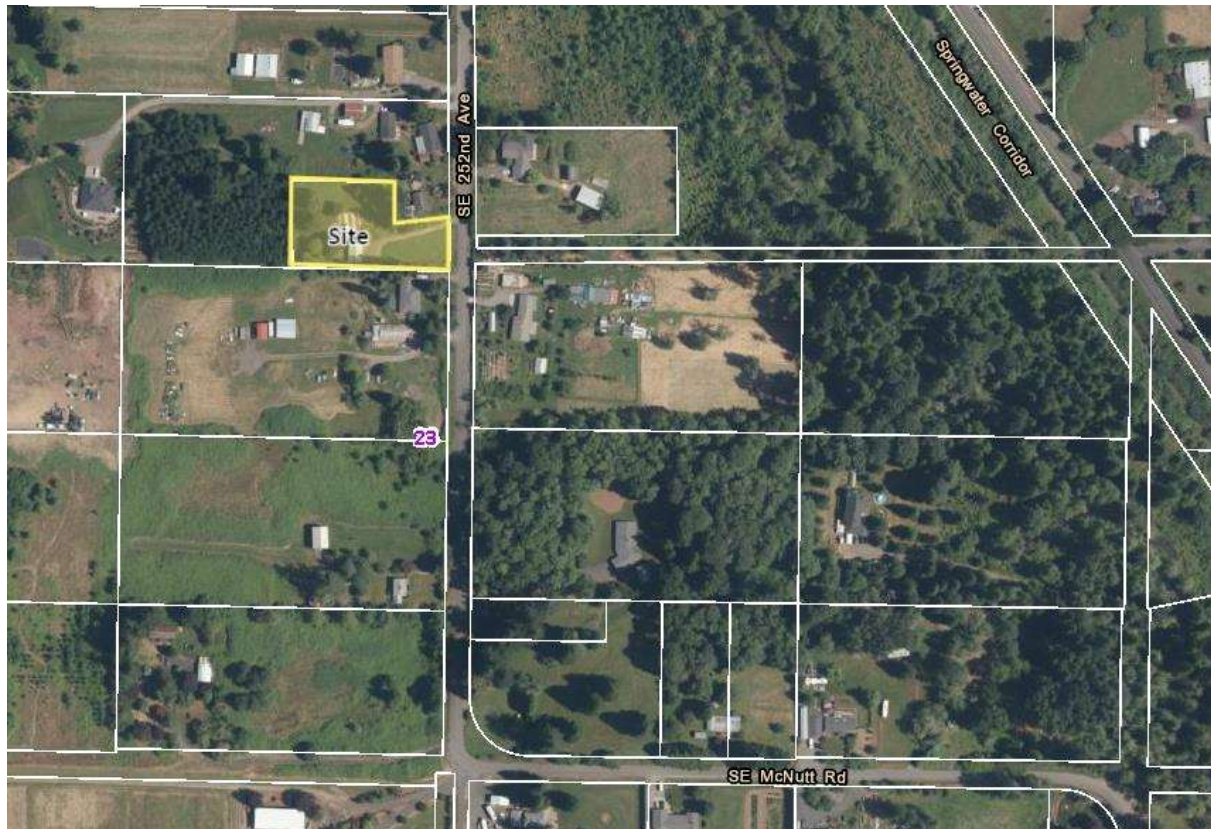
By: Lisa Estrin, Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, May 26 2022

Vicinity Map

N↑



Applicable Approval Criteria:

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

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – 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

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 the property identified as 1S3E23B - 00901 (subject property). The application does not propose any new development at this time.

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 reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated east Multnomah County in the area known as West of Sandy River. The property is zoned Multiple Use Agriculture – 20 (MUA-20) and is located within the Metro’s Urban Growth Boundary (UGB). Assessment & Taxation records indicate that a mobile home and an outbuilding occupy the subject property. The mobile home was approved as a temporary dwelling in 1994 and was placed on the property in 1994 through to a health hardship permit approval. It was to be removed once the Health Hardship Permit expired.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.4. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 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 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.*

5.0 Lot of Record Criteria:

5.1 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.)

(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: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the MUA-20 zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The applicant provided seven deed(s) (Exhibit A.8, A.9, A.13 through A.17) to support the Lot of Record request. Planning staff obtained eight deeds from the County Recorder’s office to help with the verification process (Exhibit B.2 through B.9). In the Health Hardship 3-94 permit, the property owners represented to the County that the temporary dwelling would be placed on Lot 102, Botefuhr Tract (Exhibit B.16). In August 1997, a Quitclaim Deed was recorded that did not properly describe tax lot 901 as it did not close the metes and bound description back at the point of beginning. On December 18, 1997, another Quitclaim Deed was recorded that fully describes tax lot 1S3E23B -00901 (subject property) (Exhibit B.4). The Quitclaim Deed (Exhibit B.4) includes a legal description matching the latest deed recorded in 2021 (Exhibit B.9). In 1997, the subject property was zoned MUA-20 per historical County zoning maps (Exhibit B.14 & B.15).

In 1997 through the present, the MUA-20 zone has a minimum lot size of 20 acres (MCC 11.15.2138(A)/MCC 39.4325(A)) unless a Lot of Exception (MCC 11.15.2140/ MCC 39.4330) or a Lot Size for Conditional Use (MCC 11.15.2144/MCC 39.4335), was granted. The parcel or lot to be created was required to have a Minimum Front Lot Line Length of 50 feet (MCC 11.15.2138(C)/MCC 39.4325(C) and was required to abut a public street or have other access determined to be safe and convenient for pedestrians and for passengers and emergency vehicles (MCC 11.15.2148/ MCC 39.4345). Staff did not find an approval of a Lot of Exception or a Conditional Use Permit on the property. The subject property is 1.02 acres, has a 105 ft. front lot line and is adjacent to SE 252nd. The 1.02 acre property size does not comply with the minimum lot size for the MUA-20 zone.

The subject property did not meet all applicable zoning laws at the time of its creation or reconfiguration.

In 1997, the process to divide a property into three or less parcels required the review and approval of a Type III or IV land division application. Pursuant to MCC 11.45.750 (Exhibit B.17), to complete an approved land division in 1997, a partition plat was required to be recorded with the County Survey. There is no evidence of a plat being recorded, nor was the legal description for the subject property updated to reflect the recording of a plat (Exhibit B.9). The creation of the unit of land contained in tax lot 1S3E23B-00901 did not comply with the County’s land division regulations.

Based upon the above, the subject property did not satisfied all applicable zoning and land division laws when it was created or reconfigured in 1997.

5.2 MCC 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.**

(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: Section (A) is for information purposes. The subject property is not a Lot of Record.
Criterion not met.

(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: Subsection (C) is for informational purposes.

(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 discussed above under section 5.1, the subject property did not comply with the applicable zoning and land division laws at the time of its creation. The area of land contained within Tax lot 1S3E23B-00901 must be returned to its last legal configuration in order to be a Lot of Record. No evidence has been presented that the subject property was created by the foreclosure of a security interest or created by court decree. While tax lot 1S3E23B-00901 is a tax lot, it is not a lawfully created unit of land. *Criteria not met.*

Based on the findings in 5.1 & 5.2, the subject property is not Lot of Record.

6.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

All other exhibits are available for review in Case File T2-2022-15602 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	3/14/2022
A.2	5	Title Plant Records Report dated March 2, 2022	3/14/2022
A.3	2	Warranty Deed recorded April 22, 1957 in Book 1839, Page 321 & 322 [Lot 102 & 109 Botefuhr Tract]	3/14/2022
A.4	1	Warranty Deed recorded April 22, 1957 in Book 1839, Page 325	3/14/2022
A.5	1	Assessor Map with Tax Lots 900 and 901 Starred	3/14/2022
A.6	1	Botefuhr Tracts	3/14/2022
A.7	5	Title Plant Report dated March 2, 2022	4/15/2022
A.8	2	Warranty Deed recorded April 22, 1957 in Book 1839, Page 321 & 322 [Lot 102 & 109 Botefuhr Tract] (Holtz to Ron & Eva Stewart)	4/15/2022
A.9	1	Warranty Deed recorded April 22, 1957 in Book 1839, Page 325 [N 120 ft. of Lot 102 & N 120 ft. of the E 456 ft. of Lot 109] (R & E Stewart to R.A. & Gisela Stewart)	4/15/2022
A.10	1	Assessor Map with Tax Lots 900 and 901 Starred	4/15/2022
A.11	1	Botefuhr Tracts	4/15/2022
A.12	2	Email from Jean Adcock & Applicant Response	4/15/2022
A.13	2	Warranty Deed recorded November 12, 1985 in Book 1864, Page 461 & 462 [Lot 109 minus N 120 ft of the E 456 ft of Lot 109, Lot 102 minus N 120 ft., & Lot 102 minus 120x120x120x120 square] (Eva Stewart to R.A. & Gisela Stewart)	4/15/2022
A.14	1	Bargain & Sale Deed recorded October 8, 1986 in Book 1945, Page 350 [All of Lot 102 except life estate] (Eva Stewart to R.A. & Gisela Stewart)	4/15/2022
A.15	2	Warranty Deed recorded November 2, 1989 in Book 2250, Page 367 & 368 [N 120 ft. of Lot 102 & N 120 ft. of the E 456 ft of Lot 109] (R.A. & Gisela Stewart transfer to a trust)	4/15/2022
A.16	2	Warranty Deed recorded November 2, 1989 in Book 2250, Page 369 & 370 [Lot 102 minus Life Estate] (R.A. & Gisela Stewart transfer to a trust)	4/15/2022

A.17	1	Quitclaim Deed recorded April 23, 1990 in book 2294, Page 1528 [All of Lot 102 except life estate over 120x120x120x120 square] (Eva Stewart to R.A. & Gizela Stewart)	4/15/2022
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment, and Taxation Property Information for 1S3E23B - 00901 (Alt Acct#R092605530 / R118928)	3/14/2022
B.2	2	Quitclaim Deed recorded March 31, 1994 Instrument 94-051222 [Entire Lot 102 Botefuhr Tract] (Eva Stewart to R.A. & Gisela Stewart)	3/21/2022
B.3	1	Quitclaim Deed recorded August 29, 1997 Instrument 97-131976 [Almost describes TL 901 but doesn’t close] (R.A. & Gisela Stewart Trust to Harold Stewart)	3/21/2022
B.4	1	Quitclaim Deed recorded December 18, 1997 Instrument 97-195017 [Describes TL 901] Deed of Creation	3/21/2022
B.5	1	Bargain & Sale Deed recorded July 5, 2001 Instrument 2001-101514 [Describes TL 901] (Harold Stewart to Harold & Donna Stewart)	3/21/2022
B.6	1	Bargain & Sale Deed recorded July 14, 2009 Instrument 2009-100340 [Describes TL 901] (Harold Stewart to Harold & Penelope Stewart)	3/21/2022
B.7	2	Bargain & Sale Deed recorded June 20, 2019 Instrument 2019-062463 [Describes TL 901] (H & P Stewart to Trustees of Trust)	3/21/2022
B.8	5	Warranty Deed recorded April 8, 2020 Instrument 2020-041650 [Describes TL 900] (Stewart Living Trust to Rosenthals)	3/21/2022
B.9	5	Warranty Deed recorded November 8, 2021 Instrument 2021-164831 [Describes TL 901] (Stewart Living Trust to Rosenthal)	3/21/2022
B.10	1	Tax Map 1S3E23B – current 4.13.2022	4/13/2022
B.11	1	Survey 67258	4/13/2022
B.12	1	Survey 64452	4/13/2022
B.13	1	October 6, 1977 Zoning Map (MUA-20)	4/13/2022
B.14	1	August 14, 1980 Zoning Map (MUA)	4/13/2022
B.15	1	1999 Zoning Map (MUA-20)	4/13/2022
B.16	36	Health Hardship Permit 3-94	5/4/2022
B.17	24	Land Division Regulations adopted in 1996 (applicable to the 1997 land divisions)	5/4/2022
B.18	4	Multiple Use Agriculture – 20 Zoning Regulations adopted in 1996 (applicable to the 1997 land divisions)	5/4/2022

'C'	#	Administration & Procedures	Date
C.1	3	Incomplete letter	4/13/2022
C.2	1	Applicant's acceptance of 180 day clock	4/13/2022
C.3	1	Complete letter (day 1: May 4, 2022)	5/4/2022
C.4	3	Opportunity to Comment and mailing list	5/6/2022
C.5	9	Administrative Decision and mailing list	5/26/2022