

NOTICE OF DECISION

Case File: T2-2022-15635

Permit: Lot of Record Verification

Applicants: Stephen and Amy Lyda **Owners:** Dave and Kerri Bradley

Location: 33904 SE Smith Road, Corbett **Map, Tax lot:** 1S4E04AA -00500
Tax Account #: R994041120 **Property ID #:** R341364

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.

Determination: The subject property identified as 33904 SE Smith Road, Corbett also known as 1S4E04AA -00500 is 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, September 15, 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 for review by contacting Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

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: Rithy Khut, Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, September 1, 2022



Applicable Approval Criteria:

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

Multnomah County Code (MCC): General Provisions: 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 – Multiple Use Agriculture-20 (MUA-20)

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

Chapter 39 - Zoning Code

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 33904 SE Smith Road, Corbett also known as 1S4E04AA -00500 (“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. If the parcel, lot, or unit of land met all applicable zoning laws and applicable land division laws, it may be determined to be a Lot of Record.

2.0 Property Description & History:

Staff: The subject property is located on the south side of NE Smith Road near the intersection of NE Smith Road and E. Historic Columbia River Highway in unincorporated east Multnomah County in the area known as the East of Sandy River Plan Area. The subject property is zoned Multiple Use Agriculture - 20 (MUA-20) and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is approximately 2.00 acres in size. The property has no overlays. Aerial photo review from 2020 shows the presence of four (4) buildings or structures on the subject property (Exhibit B.3).

There have been previous land use/building permit associated with the subject property:

Land Use / Building Permit #	Date Approved	Decision	Description
730020	January 2, 1973	Approved	New single-family dwelling
	March 28, 1994	Approved	Master bedroom and bath addition
BP-2017-9766	November 29, 2017	Approved	New accessory building and review of three (3) buildings not previously reviewed by the County

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.2. 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: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

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. *This criterion 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.)**

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 Multiple Use Agriculture – 20 (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 findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided one (1) deed to support the Lot of Record request. The earliest deed provided was recorded in Book 994, Page 675 on July 1, 1974 and contains a legal description matching the current configuration of the subject property (Exhibit A.5 and B.4). In 1974, the subject property was zoned Agricultural District (F2) per historical County zoning maps (Exhibit B.5). The F2 zone had a minimum lot size of 2 acres (Exhibit B.6). There was no

requirement for road frontage or minimum front lot line length or lot width. The subject property is 2 acres (Exhibit B.2).

The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.

In 1974, the process to created or divide a parcel required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1974 deed, the applicable land division laws were satisfied (Exhibit A.5).

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1974.

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: The subject property contained in tax lot 500 and is subject to this Lot of Record verification is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. Additionally, the applicant is not requesting a partitioning of the Lot of Record along the boundary; therefore, this criterion is not applicable. *This criterion is not applicable.*

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.**

Staff: Section (A) is for information purposes.

(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 subject property has less than the minimum lot size for new parcels or lots in the MUA-20 zone and is subject to (B) above. It may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. *This criterion is 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. The property owner is not proposing to sell or convey any portion of the lot at this time. *This criterion is met.*

(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 is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is a legally described parcel/lot created by the recording of a deed and is not an area of land created by the foreclosure of a security interest or created by court decree. *These criteria are met.*

6.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2022-15635 by contacting Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	04/01/2022
A.2	9	Preliminary Title Report	04/01/2022
A.3	1	How to Conduct Deed Research for Lot of Record Handout	04/01/2022
A.4	2	Parcel Record – Cartographic Unit Card	04/01/2022
A.5	1	Warranty Deed recorded in Book 994, Page 675 on July 1, 1974	04/01/2022

‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1S4E04AA -00500 (Alt Acct #R994041120)	04/01/2022
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1S4E04AA -00500 (Alt Acct #R994041120) highlighted	04/01/2022
B.3	1	Aerial Photo – Summer of 2020	07/15/2022
B.4	3	Bargain and Sale Deed recorded as Instrument #2017-090268 on July 27, 2017	07/15/2022
B.5	1	Map showing zoning from November 15, 1962 to October 5, 1977	07/15/2022
B.6	3	Multnomah County Zoning Code as amended adopted on May 21, 1968	07/15/2022
‘C’	#	Administration & Procedures	Date
C.1	2	Complete letter (day 1)	04/22/2022
C.2	5	Opportunity to Comment and mailing list	07/21/2022
C.3	4	Administrative “Short” Decision and mailing list	09/01/2022
C.4	10	Administrative Decision and mailing list	09/01/2022