



## MULTNOMAH COUNTY OREGON

### LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

# NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

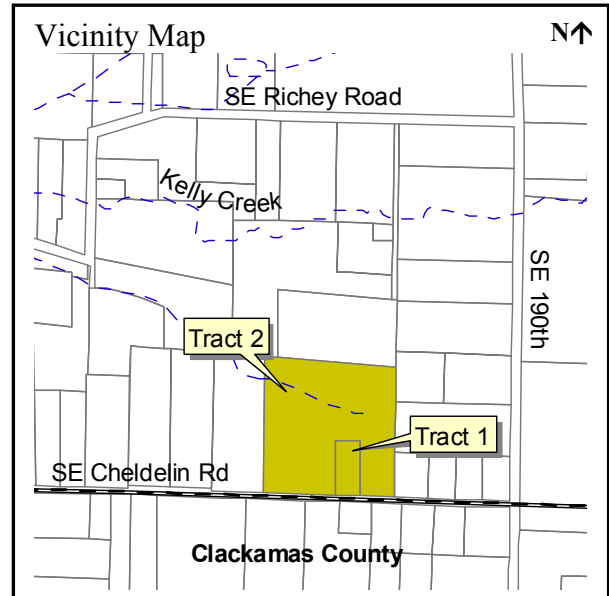
**Case File:** T2-03-068

**Permit:** Property Line Adjustment

**Location:** 18601 SE Cheldelin Road  
TL 3000 & 3100, Sec 20, T1S, R3E WM  
Tax Account #R99320-0560  
& #R99320-0200

**Applicant:** Corinne O'Halloran  
1000 NE 122<sup>nd</sup> Ave.  
Portland, OR 97230

**Owner:** Joyce Walls  
18601 SE Cheldelin Road  
Portland, OR 97236



**Summary:** A Property Line Adjustment between Tax Lot 3000 and Tax Lot 3100 that will place all outbuildings on the same property as the existing dwelling.

**Decision:** Denied. The application is denied because adjusting the line would relocate two buildings that are accessory to the farm use on the 13.36-acre property onto the 1.14-acre residential use property. The 1.14-acre property does not contain a farm use and therefore the accessory buildings would not be accessory to a listed primary use, in violation of MCC 11.15.2214 – Accessory Uses. Additionally, the applicant did not demonstrate the buildings were lawfully established as required by MCC 37.0560 – Code Compliance.

Unless appealed, this decision is effective Monday, July 26, 2004, at 4:30 PM.

Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, July 12, 2004

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Don Kienholz, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, July 26, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 11.15.2218 Dimensional Requirements, MCC 11.15.2220 Property Line Adjustments, MCC 11.15.2222 Lot of Record and MCC 11.45.115 Property Line Adjustment.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

**Staff:** The applicant is requesting to exchange a small portion of property between property known as R993200560 (Tract 1) and property known as R993200200 (Tract 2). The exchange would keep both properties the same size and transfer two buildings listed as barns from Tract 2 onto Tract 1. Tract 2 is listed as 13.36-acres and Tract 1 is listed as 1.14-acres. Both properties would continue to have road access.

2. **Site Characteristics**

**Staff:** The surrounding area in Multnomah County is zoned Rural Residential (RR) and made up of smaller sized properties ranging from roughly one-acre to five-acres. Tract 2 is one of the largest properties in the area at 13.36-acres. The property is on the north side of SE Cheldelin Road, which makes up the boundary between Multnomah and Clackamas Counties. Dwellings occupy the vast majority of properties as well as small farms. The topography is very flat and clear with small clusters of trees intermittently located.

3. **Public Comment**

**MCC 37.0530(B) Type II Decisions**

**(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject Tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14<sup>th</sup> day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.**

**Staff:** An Opportunity to Comment was sent out to all property owners within 750-feet of the property lines on May 5, 2004. No comments were received by this office.

*Criterion met.*

4. **Proof of Ownership**

**MCC 37.0550 Initiation Of Action.**

**Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Staff:** This standard requires written consent of the property owner at the time of application. At the time of application, Multnomah County Assessment and Taxation records showed Gary and Joyce Walls as owners of property known as 18601 SE Cheldelin Road (Tax Lot 3000) as well as the adjacent property that is a part of this application (Tax Lot 3100). Joyce Walls signed the General Application form and the "Statement of Property Owner Consent" form. Corinne O'Halloran has signed the General Application Form as the Applicant. During the course of the application process, the smaller 1.14-acre property was sold to Brad Ketch. Staff is unaware of when the sale occurred. During the course of the application process, Multnomah County Assessment and Taxation changed the listed owner to Mr. Ketch. Multnomah County worked to keep Mr. Ketch informed of the case and he is aware of this application.

*Criterion met.*

5 **Property Line Adjustments Are Allowed In The Rural Residential Zoning District**

**MCC 11.15.2220 Lots of Exception and Property Line Adjustments**

**E. Pursuant to the applicable provisions in the Multnomah County Land Division Ordinance, the Planning Director may grant a property line adjustment between two contiguous lots or parcels 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 pro-posal over that which could occur on the entirety of the combined lot areas before the adjustment.**

**A. (1) No additional lot or parcel is created; and**

**Staff:** Prior to the adjustment there are two lots and after the adjustment there will be only two lots. No new lots are created.

*Criterion met.*

**B. (2) 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:** This Property Line Adjustment is an equal area exchange and therefore neither lot will be enlarged or reduced in size. The lot that is over 10-acres in size shall remain over 10-acres in size and the lot that is less than 5-acres in size will remain less than 5-acres in size. Therefore, there is no possibility of creating another lot.

*Criterion met.*

6. **The Proposal Meets The Property Line Adjustment Criteria Of The Land Division Code**

**MCC 11.45.115 Property Line Adjustment (Lot Line Adjustment)**

**A property line adjustment is the relocation of a common property line between two abutting properties.**

- A. A. The Planning Director may approve a property line adjustment between two properties, in either the Urban Area or the Rural Area, where an additional lot or parcel is not created and where the existing lot or parcel reduced in size by the adjustment is not reduced below the minimum lot size established by the applicable zoning designation.**

**Staff:** No new properties are being created as part of this application. This is an equal area exchange so therefore no lot is being reduced in size.

*Criterion met.*

- B. B. The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Property Line Adjustment or Lot Line Adjustment.**

**Staff:** No new lot is being created under the proposed adjustment and one of the properties is below the minimum lot size and shall remain below the minimum lot size.

*Criterion met.*

- C. C. Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:**

- 1. No additional lot or parcel shall be created from any parcel by the property line adjustment; and**
- 2. 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**
- 3. The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.**

**Staff:** No additional lot is being created under this proposal. At the time of application, both properties were owned by the same owner, Gary and Joyce Walls. All dimensional requirements other than the minimum lot size are met as determined in Finding #7.

*Criteria met.*

7. **The Dimensional Requirements Of The Rural Residential Zoning District Are Met**

## **MCC 11.15.2218 Dimensional Requirements**

### **A C. Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height 35 feet.**

**Minimum Front Lot Line Length 50 feet.**

**Staff:** All structures on the property will meet the required setbacks. See the Tentative Plan Map (Exhibit 1) for surveyed distances.

*Criteria met.*

- B. 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 Planning Commission shall determine the necessary right-of-way widths and additional requirements not otherwise established by Ordinance.**

**Staff:** Cheldelin Road does not have the minimum 50-feet of Right-of-Way as required under Multnomah County Code but no development is proposed. The existing structures are all over 50-feet from the front property line.

*Criterion met.*

## **8. Both Properties Involved Are Lots of Record**

### **A. 11.15.2222 Lot of Record**

**A. For the purposes of this district, a Lot of Record is a parcel of land:**

- 1. For which a deed or other instrument dividing land was recorded with the Department of Administrative Services, or was in recordable form prior to October 6, 1977; and**
- 2. Which, when established, satisfied all applicable laws.**

**B. A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

**C. Separate Lots of Record shall be deemed created when a street or zoning district boundary intersects a parcel of land.**

**D. Except as otherwise provided by MCC .2220, .2224, and .7720, 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 tax lot map used to show the zoning of the area from 1958 until October 5, 1977 shows the area zoned Suburban Residential (SR) (Exhibit 2). It is important to note the tax lots noted on the map were as of January of 1966. In 1966, it appeared there were three lots where currently there are two. They consisted of tax Lot 20 (4.75-acres), Tax Lot 21 (8.61-acres), and Tax Lot 56 (1.14-acres). A deed recorded on April 22, 1970 in Book 729 pages 566 and 567 consolidated all three properties into one 14.50-acre property.

Next, a deed was recorded on June 27, 1973 (Exhibit 3) in Book 934, pages 1540 and 1541. That deed describes a 13.36-acre property and excepts out the 1.14-acre property, thus dividing the smaller piece from the larger piece. In 1973, the property was still zoned Suburban Residential. At that time, the zoning requirements under the SR district required a minimum 40,000 square foot lot size. There were also 10-foot side yard and 30-foot front and rear yard setback requirements and a requirement of access onto a street. At that time, the smallest property had 1.14-acres, well over 40,000 square feet. The home, built in 1965 according to Multnomah County Assessment and Taxation records (Exhibit 4), had 20-foot side yard setbacks and over 50-foot setbacks for both the front and rear yards. The property also had direct access onto Cheldelin Road. Therefore, the smaller lot met the zoning requirements. The larger property was vacant, over 13-acres in size, and also had direct access to Cheldelin Road. Therefore it also met the zoning requirements at the time it was created.

The County did not have land division requirements for partitions of three or fewer lots in a calendar year. All that was required was that a deed be recorded describing the property. As such, the properties met the land division requirements in place at the time they were created.

*Criteria met.*

9. **Both Properties Will Not Be In Full Compliance With All Applicable Provisions Of The Code**

**MCC 37.0560      Code Compliance And Applications.**

**The County shall not approve any application for a permit or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. A permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.**

**Staff:** All “Applicable Provisions” of the Multnomah County Code include building codes and zoning codes.

A building permit from 1964 permitted the dwelling and the attached garage. There are two structures currently on Tract 2. They are listed as barns on the Tentative Plan Map (Exhibit 1). The date the buildings were constructed is unknown but after reviewing a 1977 air photo (Exhibit 5) and observing them during a site visit, staff believes that only one was present at the time the picture was taken in 1977. The southern most structure (structure 1) appears on the 1977 air

photo as it is today but with a lean-to on the northern side. Since then, the lean-to appears to have been removed and a larger independent structure (structure 2) was built in its place without permits. No permits are on file for structure 1 either. The County does not have any air photos from 1958 until 1977 that would provide documentation for the existence of structure 1 prior to 1977. The applicant has not provided any evidence that would demonstrate either structure was lawfully established. Therefore, staff cannot make a finding that the buildings meet the building code requirements and are in compliance with MCC 37.0560.

Additionally, if the property line adjustment was approved, the accessory structures would be transferred from a property in farm use and in farm deferral to a property in residential use and not in farm deferral. In that situation, the two accessory buildings would no longer be accessory to a primary use and thus not allowed as an accessory use under MCC 11.15.2214. The applicant has not provided any documentation that would demonstrate the buildings could obtain compliance. Without a primary use to be accessory to, the buildings are not in full compliance with the Rural Residential zoning district.

*Criterion not met.*

### **Conclusion**

Because the property line adjustment would transfer two buildings accessory to a farm use onto residential property without any farm use, the structures would not be in compliance with the applicable zoning code. Accessory buildings and uses **MUST** be accessory to an allowed primary use as listed in the respective zoning district. While a farm use is allowed in the RR zoning district and on the subject property the barns would be transferred to, there is no evidence of a farm use taking place.

### **Exhibits**

1. Tentative Site Plan.
2. Zoning Map From 1958 Until October 6, 1977.
3. Submitted 1973 Deed.
4. Multnomah County Assessment And Taxation Record.
5. Multnomah County 1977 Air Photo.

#### **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.