



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

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

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: T2-04-005

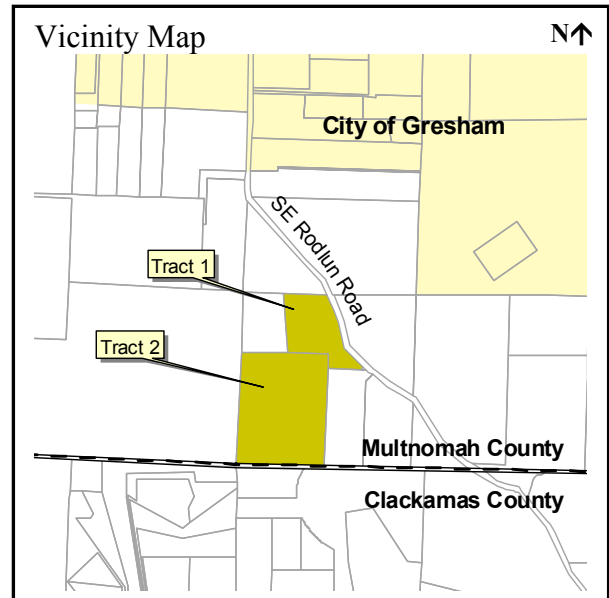
Permit: Property Line Adjustment

Location: 8061 & 8467 SE Rodlun Road
TL 900 & TL 1100, Sec 21, T1S, R3E
Tax Account #R993210610 &
#R993210510

Applicant: Anthony Sepich
8061 SE Rodlun Road
Gresham, OR 97080

Owner: Anthony and Kathy Sepich
8061 SE Rodlun Road
Gresham, OR 97080

Darrell And Taunji Waterman
8467 SE Alder Ridge Road
Gresham, OR 97080



Summary: A Property Line Adjustment to move a property line between the two identified properties to increase the distance between the property line and the dwelling on 8061 SE Rodlun and to give the property known as 8467 SE Alder Ridge Road direct access to Rodlun Road.

Decision: Approved With Conditions.

Unless appealed, this decision is effective Wednesday, May 12, 2004, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling - Planning
Director

Date: Wednesday, April 28, 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 Wednesday, May 12, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 36.2060 Dimensional Requirements; MCC 36.2070 Lot Line Adjustment; MCC 36.2075 Lot of Record; MCC 36.7970 Lot 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.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

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. **The property owner, or representatives thereof, shall complete the adjustment per the attached "Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment" included as Exhibit E. This will entail survey and monumentation of the new lot line by a registered surveyor and verification by survey of the location of the existing dwellings and other structures in relation to lot lines as required by MCC 36.7970(C).**

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 seeking a Property Line Adjustment (PLA) to increase the setback from the dwelling to the property line on property known as 8061 SE Rodlun Road and to give direct road access to property known as 8467 SE Alder Ridge Road.

2. **Site Characteristics**

Staff: The property is heavily forested except for near the dwellings and their surrounding landscaped grounds. The forest canopy is a mix of evergreens and alders. The property is very hilly with an incline from the north to the south on 8061 SE Rodlun with a steep decline from the apex where the dwelling is located. The property drops off steeply again about 100-feet south of the dwelling. The area being exchanged appears to have a very rudimentary logging road off of SE Rodlun Road that is partly overgrown. The logging road is in essence in a ravine between the two dwellings and at the bottom of the decline from the dwelling on 8061 SE Rodlun. The topography then inclines very steeply on 8467 SE Alder Ridge Road towards the dwelling on the same property.

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 14th 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 mailed to property owners within 750-feet of the property lines on March 12, 2004. One comment was received by David A. Plant on March 22, 2004.

The main concern of the letter was that the Mr. Plant had no objection to the property line adjustment as long as the adjustment would not facilitate further subdivision. He noted that direct

access to SE Rodlun Road could provide access for potential subdivision if annexed into the City of Gresham.

At this point, the County has no plans to change the zoning of the two properties involved in the property line adjustment from Commercial Forest Use. As such, there is no potential for further land divisions since the zoning has a minimum lot size of 80-acres. Should the area be annexed into the City of Gresham, then Multnomah County will no longer have land use planning jurisdiction over the properties or potential land divisions.

Criterion met.

4. **Proof of Ownership**

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: Multnomah County Assessment and Taxation records show Anthony and Kathy Sepich as owners of property known as 6061 SE Rodlun Road and Darrell and Taunji Waterman as owners of property known as 8467 SE Alder Ridge Road. Anthony Sepich signed the General Application form and all parties listed in on the Assessment and Taxation records signed the “Statement of Property Owner Consent” form.

Criterion met.

5. **Property Line Adjustments Are Allowed in the CFU Zoning District**

MCC 36.2025 Review Uses

(H) Lot Line Adjustment pursuant to the provisions of MCC 36.2070.

Staff: A lot line adjustment is allowed as a review use.

Criterion met.

6. **The Proposed New Lot Line Meets The CFU Dimensional Requirements**

MCC 36.2060 Dimensional Requirements

(C) Minimum Forest Practices Setback Dimensions From Tract Boundary - Feet:

Road Frontage	Other Front	Side	Rear

60 from centerline of road from which access is gained	130	130	130
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Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 36.2110, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 36.2105 (A) (5) (c) 2.

Staff: As per the submitted site plan (Exhibit A), distance between the new property line and the existing dwelling on 8061 SE Rodlun Road would increase from roughly 30-feet to over 130-feet, thus meeting the required forest practices setback. The distance from the new property line and the dwelling on 8467 SE Alder Ridge Road would still be well over 500-feet. In addition, after the property line adjustment, both lots would have over 50-feet of road frontage.

Criterion met.

7. Both Properties Are Lots of Record

MCC 36.0005(L)(13)

A. (13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. 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: Staff will look at both properties separately to determine if each one meets the definition of Lot of Record:

8061 SE Rodlun Road – #R993210610 – A deed has been provided by the applicant recorded on October 12, 1966 in Book 531, Page 921 that created and describes the property known as 8061 SE Rodlun Road. On that date, the property was zoned Suburban Residential (SR). The SR zoning district required the property to abut a public street and to be 40,000 square feet in size. The property abuts SE Rodlun Road and is 4.09 acres. Therefore, the property met all zoning laws in place at the time it was created. There were no partition requirements in place in 1966 for land divisions of three lots or less in a calendar year. As such, the recording of the deed creating the subject lot was a proper way to divide land and thus the property met the land division laws in place at the time.

8467 SE Alder Ridge Road - #R993210510 – A deed has been provided by the applicant recorded on August 12, 1963 in Book 2184, Page 325 that describes the property known as 8467 SE Alder Ridge Road. On that date, the property was zoned Suburban Residential (SR). The SR zoning district required the property to abut a public street and to be 40,000 square feet in size. The subject property did not abut a public street and is considered an interior lot.

The SR zoning code in place, both at the time the property was created and at the time the property was developed, had the requirement that if a property did not abut a road, access had to be held suitable by the planning commission. In case T2-01-100, a Hearings Officer made the finding that because of the rudimentary review process in place in the 1970’s with the advent of the Oregon Land Use Planning system, a thoroughly formal review process for access review may or may not have been entirely documented. Additionally, planning staff’s review of access requirements at the time of development in lieu of the Planning Commission constituted the County using its review authority on behalf of the Planning Commission and created the property properly as per ORS 92.014 which stated:

ORS 92.014 approval of planning commission or governing body of city or county required before creating street or road to partition land. (1) No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the city or County having jurisdiction over the area or tract of land to be partitioned.

The subject property was created in 1963 and the circumstance is similar in that at the time the applicant came in for building permits, the zoning was the same as well as the rules for land divisions of three or fewer lots. Even though the property was created in 1963 and later developed in 1977, the rules in place at both times were the same and would not have differentiated between creating the property in 1963 or 1977. A building permit has been

placed in the record signed and dated in September of 1977 by County staff authorizing the construction of a single-family dwelling. Both Right-of-Way and Land Use Planning signed their respective lines on the building permit. Additionally, the sign-off indicates that the access to the property had been reviewed and approved, similar to case T2-01-100. In both cases, the Land Use Feasibility Study record (for this case, Exhibit C) had shown the development and the access to the property. As such, staff finds that the County reviewed the access to the property at the time of development and held the access was suitable. While the review did not occur at the time the property was created, it would not matter since the rules were exactly the same and the review would not have been different had the deed creating the property been recorded in 1963 or September of 1977.

Criterion met.

B. MCC 36.2075 Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this 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

Staff: The applicant has included a chain of title for the properties and as per the submitted deeds, the owners of the properties on February 20, 1990 are as follows:

8061 SE Rodlun Road – Owned from March 7, 1985 until present by Anthony Sepich.

8467 SE Alder Ridge - Owned from December 13, 1977 to present by Darrell Waterman and Taunji Waterman.

For the surrounding properties, Multnomah County Assessment and taxation records show that none of the adjacent properties were in common ownership with the two properties involved with the PLA in either 1989 or 1990. The surrounding properties were owned by the same owners both years and were known as: Baker, Bliss, Henry, Plant and the State of Oregon.

Criterion met.

8. Compliance with Lot Line Adjustment Criteria For CFU Zoning.

MCC 36.2070 Lot Line Adjustment.

(A) An adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

A. (1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;

Applicant: This will not allow for a new dwelling on either property.

Staff: Staff concurs. Both properties are currently developed with existing dwellings. The new lot line will keep one dwelling on each lot.

Criterion met.

- B. **(2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;**

Applicant: Less hazards for falling trees. Tract 2 gains frontage to Rodlun Road for ease of harvesting trees. Less danger from fire.

Staff: Staff concurs. The proposed property line adjustment is an equal area exchange and thus does not reduce the size of either forest zoned property. Additionally, the new lot line gives the owner of 8061 SE Rodlun Road the ability to maintain fire breaks and safety zones under the current code, thus reducing the risk of fire and damage to harvestable timber. Direct access onto SE Rodlun road for 8467 SE Alder Ridge Road allows for the harvesting of timber near the road should a Forest Practice Act permit be issued. The existing topography makes it difficult to access the area from the existing access point. So the new lot line configuration would enhance the continuation of commercial forest practices.

Criterion met.

- C. **(3) The new lot line is in compliance with the dimensional requirements of MCC 36.2060 (C) through (E); and**

Applicant: This lot line adjustment is being made to bring the side lot line into compliance with current standards of 130 feet set-backs. The current set-back is approximately 17 feet; we propose to add an additional 125-feet, making tract one more suitable for commercial forest practices.

Staff: The new property line increases the yard and setback distances from the existing dwelling to the new lot line enough to bring distance into conformance with the standard. The yard would be increased to roughly 135 to 140-feet.

Criterion met.

- D. **(4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use.**

Staff: Both dwellings on the involved properties were built prior to the current CFU dwelling standards and were permitted as new, single-family residences and not as health hardships or a farm/forest help dwellings.

Criterion met.

10. **Compliance with Property Line Adjustment Criteria in Land Division Code**

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

- A. **(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: Both properties involved with the PLA are below the minimum lot size of the CFU zoning district. No new lot will be created as a result of this application.

Criterion met.

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

- a. **(1) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

Staff: No new lot line is created as a result of the property line adjustment per the submitted site plan (Exhibit A).

Criterion met.

- b. **(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**

Staff: Both property owners have signed the "Statement of Property Owner Consent" form (Exhibit D).

Criterion met.

- c. **(3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.**

Staff: The adjusted properties meet the required dimensional requirements other than area as described in Finding #6(C). As a result of this application, the fire safety breaks and road frontage requirements for the properties are brought into compliance with the current standards.

Criterion met.

- d. **(4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the**

applicable provisions of the Street Standards Code and Rules as determined by the County Engineer.

Staff: The County's standard for right-of-way width is 50-feet. The right-of-way for Rodlun Road has a width of 45-feet. This code requirement predates modern case law regarding exactions not connected to development and therefore can not be applied to permits such as a Property Line Adjustment.

Criterion met.

Conclusion

Based upon the findings contained herein, the applicant has carried the burden necessary to demonstrate that, with conditions, the criteria for a Property Line Adjustment contained in the Zoning and Land Division codes have been met.

Exhibits

- A. Submitted Tentative Site Plan
- B. Building Permit for 8467 SE Alder Ridge Road
- C. Land Feasibility and Septic Permit Showing Access to Property.
- D. Owners Consent Form
- E. Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment"

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.
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