



**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
(503) 988-3043 FAX: (503) 988-3389

**BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON  
FINAL ORDER**

This Decision consists of Conditions, Findings of Fact and Conclusions.

**September 29, 2004**

**Case File:** T2-04-009

Appeal of the Planning Director's decision denying the subject  
application for a property line adjustment

**Location:** 1111 NW 53<sup>rd</sup> Drive and  
1245 NW 53<sup>rd</sup> Drive

**Map Description:** Tax Lots 1100 and 1200,  
Section 31, Township 1 North, Range 1 East, W.M.

**Zoning Designation:** CFU-2

**Applicant:** Elliott Mantell  
1245 NW 53<sup>rd</sup> Drive  
Portland, OR 97210

<b>Owners:</b>	Elliott Mantell	Byron and Susan Marsh
	1245 NW 53 <sup>rd</sup> Drive	1111 NW 53 <sup>rd</sup> Drive
	Portland, OR 97210	Portland, OR 97210

## **PROCEDURAL ISSUES**

### **1. Impartiality of the Hearings Officer**

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

### **2. Jurisdictional Issues**

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

## **BURDEN OF PROOF**

In this proceeding, the burden of proof is upon the Appellants.

## **SCOPE OF APPEAL**

A hearing before the Hearings Officer on a matter appealed under MCC .8290 shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal. The appellant's attachment to the Notice of Appeal stating the grounds for the appeal of the administrative decision is attached hereto as Exhibit "A" and is incorporated by this reference herein.

## **FACTS**

### **1. Applicant's Proposal**

The applicant is seeking a Property Line Adjustment (PLA) to increase the size of Tax Lot 1100. The exchange will transfer .75-acres from 1111 NW 53<sup>rd</sup> Drive to 1245 NW 53<sup>rd</sup> Drive.

The original administrative decision was denied because authorization of both property owners was not included in the original application.

Both properties are heavily forested and located in the Greater Forest Park area of the West Hills just off of Cornell Road. Slopes on the properties are fairly steep and identified as Slope Hazard Areas. Both properties are a part of the Mountain View Park Subdivision.

## 2. Testimony and Evidence Presented

- A. The hearing in the matter was originally scheduled for July 9, 2004. A continuance was asked for and granted at that hearing, until September 10, 2004.
- B. Don Kienholz gave the Staff Report for the County, and summarized the Planning Director's determination that was appeal herein.
- C. Byron Marsh, the owner of the other affected parcel, appeared, testified and supported the application.
- D. Alice Woodwath spoke on behalf of owner/applicant Elliott Mantell, in support of the application.
- E. In addition to the Supplemental Staff Report, and other material in the file, the following additional item and exhibits have been accepted:
  - H-1 Initial hearing sign-in sheet
  - H-2 Sign-in sheet for September 10, 2004 hearing
  - H-3 Letter of authorization
  - H-4 Survey map
  - H-5 Consent for property line adjustment signed by Elliott Mantell
  - H-6 Consent for property line adjustment signed by Byron and Susan Marsh

## STANDARDS, CRITERIA AS USED ON APPEAL, ANALYSIS AND FINDINGS OF FACT

### 1. Property Line Adjustments Are Allowed in The CFU-2 Zoning District

MCC 33.2215 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 33.2220 through 33.2240 when found to comply with MCC 33.2245 through 33.2310.

\* \* \*

MCC 33.2225 Review Uses

(H) Lot Line Adjustment pursuant to the provisions of MCC 33.2270.

**Staff:** Lot Line Adjustments are listed as a review use.  
*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

2. **The CFU-2 Lot Line Adjustment Approval Criteria Are Met**

MCC 33.2270 Lot Line Adjustment

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

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

**Staff:** Both properties start with one dwelling located on them and end with one dwelling on each. Therefore, the permitted number of dwellings will not be increased above that which is allowed in this district.

*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

2. **(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;**

**Staff:** Both lots are small (under 4-acres) and are not currently in forest deferral or involved with a forest practice. The surrounding properties consist of properties roughly 5-acres or less and three contain dwellings. The County does not foresee moving the property line between the two subject properties adversely affecting any forest practices in the neighborhood.

*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

3. **(3) The new lot line is in compliance with the dimensional requirements of MCC 33.2260 (C) through (E); and**

**Staff:** The proposed site plan is not to any particular scale so staff cannot verify the exact distance from the new property line to the existing dwellings. The applicant has noted the distance on the site plan as being 135-feet to the nearest structure. This is plausible but should be verified through a condition of approval requiring a surveyor to include the distance of the dwellings to the new property line on a surveyed and scaled site plan.

*Criterion can be met.*

**Hearings Officer:** The applicant has submitted a survey for the proposed property line adjustment which was marked as hearings exhibit H-4. A condition of approval will be imposed requiring that the applicant submit a scaled site plan prepared by a surveyor which will include the distance of the dwellings to the new property line. The new property line may be no closer than 130 feet from the nearest structure. This criterion can be met by the imposition of a condition of approval.

4. **(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:** Neither home contains a health hardship dwelling nor a farm or forest dwelling. Both properties contain only one single-family dwelling.  
*Criterion met.*

**Hearings Officer:** This criterion is met.

3. **The Approval Criteria In The Land Division Code For A Property Line Adjustment Are Met**

**MCC 33.7970      Property Line Adjustment (Lot Line Adjustment)**

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

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

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

**Staff:** There are two parcels prior to the adjustment and two parcels after the adjustment.  
*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

2. **(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:** The original administrative decision was denied because the consent of one of the involved property owners was withdrawn. At the July 9, 2004 hearing, both property owners indicated that an agreement could be reached on the new lot line and property configuration. To meet this criterion, consent by both property owners must be included in the record and should be granted at the hearing.  
*Criterion can feasibly be met.*

**Hearings Officer:** On September 13, 2004, both property owners submitted signed consents to the property line adjustment. This criterion is met.

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

**Staff:** The new property line meets the applicable dimensional requirements of MCC 33.2260 as found in Finding 6.

*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

4. **(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 has 60-feet of Right-of-Way on NW 53<sup>rd</sup> Drive, more than the 50-feet as required in the Street Standards Code and Rules.

*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

4. **The New Property Line Meets The CFU-2 Dimensional Requirements**

MCC 33.2260      Dimensional Requirements

- A. **(A) Except as provided in MCC 33.2265, 33.2270, 33.2275, and 33.2280, the minimum lot size for new parcels or lots shall be 80 acres.**

**Staff:** No new lot or parcel is being created.

*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

- B. **(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

**Staff:** No new lot or parcel is being created and therefore the area of each property is non-consequential.

*Criterion met.*

**Hearings Officer:** Hearings Officer concurs

- C. **(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

**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 33.2310, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 33.2305 (A) (5) (c) 2.**

**Staff:** The new property line as shown on the submitted tentative plan dated August 31, 2004 is a rear lot line and 135-feet from the closest dwelling. The exact final distance should be surveyed and noted on the final plan or a supplemental plan as a condition of approval. The new property line does not affect the road frontage or length of either parcel. Structure heights are not relevant to a property line adjustment.  
*Criterion feasibly met.*

**Hearings Officer:** The Hearings Officer concurs with Staff's analysis.

- D. **(D) The minimum forest practices setback 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 yard requirements not otherwise established by ordinance.**

**Staff:** There is 60 feet of right-of-way for NW 53<sup>rd</sup> Drive, which exceeds the minimum requirement of 50 feet.  
*Criterion met.*

**Hearings Officer:** This criterion is met.

5. **Both Properties Involved Are Lots Of Record**

A. **MCC 33.0005(L)(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:** Each parcel must be examined separately for compliance with the applicable code.

#### **Tract 1**

The applicant submitted a deed recorded on September 12, 1973 that describes the property in its current configuration (Exhibit 2). At that time, the property was zoned R-20 and had requirements of a 20,000 square foot minimum lot size, an average width of 80-feet and an average depth of 120-feet. The property was also required to abut a street. At the time the property was created, it was 3.7-acres, 225-feet wide at its narrowest point, 400-feet deep at its shortest point, and abutted NW 53<sup>rd</sup> Drive. Therefore, the property met the zoning requirements.

Land partitions of three or fewer lots were not regulated by the land division code until October 19, 1978. The property was created prior to the land division code being in effect and therefore met all land division laws in place.

#### **Tract 2**

The applicant submitted a deed recorded on September 14, 1976 that describes the property in its current configuration (Exhibit 3). At that time, the property was zoned R-20 and had requirements of a 20,000 square foot



minimum lot size, an average width of 80-feet and an average depth of 120-feet. The property was also required to abut a street. At the time the property was created, it was 25,200 square feet, 103-feet wide at its narrowest point, 139-feet deep at its shortest point, and abutted NW 53<sup>rd</sup> Drive. Therefore, the property met the zoning requirements.

Land partitions of three or fewer lots were not regulated by the land division code until October 19, 1978. The property was created prior to the land division code being in effect and therefore met all land division laws in place.

**Hearings Officer:** Each of the two properties involved in the subject property line application was created prior to the Multnomah County land division code's effective date, and therefore met all land division laws in place. Accordingly, both Tract 1 and Tract 2 are lots of record.

**B. MCC 33.2275 Lot of Record**

(A) In addition to the *Lot of Record* definition standards in MCC 33.0005, 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:** According to Multnomah County Assessment and Taxation records, neither subject parcel was in adjacent to another parcel that was in common ownership on February 20, 1990.  
Both parcels are Lots of Record.  
*Criteria met.*

**Hearings Officer:** Hearings Officer concurs


**Hearings Officer Decision:**

The Planning Director's decision in the instant case is reversed. I find that the applicant has carried the burden of proof necessary to demonstrate that the proposed lot line adjustment, as shown on Exhibit H-4, a portion of which is attached to this decision as Exhibit 1, should be granted, subject to the conditions set forth herein.

## CONDITIONS OF APPROVAL

1. The applicant will submit a scaled site plan prepared by a surveyor which will include the distance of the dwellings to the new property line. The new property line may be no closer than 130 feet from the nearest structure.
2. 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 2. 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 33.7970(C).

IT IS SO ORDERED, this 29<sup>th</sup> day of September, 2004.

  
\_\_\_\_\_  
JOAN M. CHAMBERS, Hearings Officer

1) I HELD PLAT DISTANCE OF 264.00' TO THE S.E. CORNER  
AT (N) AND FROM (S) AND (K) I HELD 350.00' PER DEED  
PAGE 1464 TO FIX POINTS (L) AND (M) .  
2) I HELD PLAT DIMENSION OF 220.00' TO (N) AND  
ID (N) I HELD 500.00' AS PER FEE No. 2003-066044  
3) AND (P) AS SHOWN  
4) I SET POINT (Q) AS DIRECTED BY THE CLIENT AND  
ID (P) FROM (L) AS SHOWN.





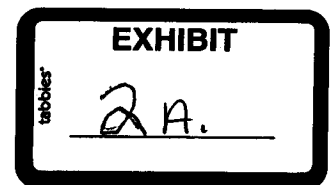
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[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

## *Surveyor's Instructions for* **Finishing A Property Line Adjustment**

If you are a surveyor who is retained by the applicant for a Property Line Adjustment in Multnomah County's planning jurisdiction, you will perform the following services:

1. Survey the tracts as necessary to relocate the common property line as proposed on the approved Tentative Plan Map.
2. Prepare a property line adjustment map showing the adjusted tracts. The map shall be 18" x 24" in size. Provide three (3) prints to the applicant. The map must include:
  - A. Date, north arrow and scale;
  - B. Each property identified as Tract 1 and Tract 2 with all new areas and dimensions resulting from the adjusted lines clearly identified;
  - C. Name and present right-of-way width of abutting streets;
  - D. Location of existing buildings and distances to adjusted property lines on a copy of the survey map for the Land Use Planning file;
  - E. Show monuments set on the new property line;
  - F. Leave a blank area at least 3" wide and 2" tall for the Land Use Planning approval stamp.
3. Prepare metes-and-bounds legal descriptions on 8 1/2" x 11" sheets for each adjusted tract. Provide three (3) copies of each description to the applicant.
  - A. Begin each description with the corresponding tract number as shown on the map;
  - B. Conclude each description with the phrase "containing \_\_\_\_\_ square feet/acres, more or less;
  - C. Leave a blank area at least 3" wide and 2" tall for the Land Use Planning approval stamp.
4. File the tracing for the final approved map with the County Surveyor.

**IMPORTANT:** To be acceptable for recording, prints of maps and copies of legal descriptions must have sharp contrast and may have no dark background.





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## **Applicant's Instructions for Finishing A Property Line Adjustment**

1. Review the Planning Director's approval decision of the proposed Property Line Adjustment. Take particular notice of any "conditions of approval" that may be required.
2. Retain a surveyor (who is licensed by the State of Oregon) to:
  - A. Survey the properties and relocate the common property line as proposed on the approved Tentative Plan Map.
  - B. Prepare a survey map following the **Surveyor's Instructions for Finishing a Property Line Adjustment** and provide three (3) exact copies of the map.
  - C. Prepare metes-and-bounds legal descriptions for each adjusted tract and exchange area (if needed) and provide three (3) copies of each description.
3. Make an appointment with the Planner whose name is on the approval "Decision." At that appointment, bring the maps and legal descriptions prepared by your surveyor. Once we verify that the adjusted properties conform to the approved Tentative Plan Map and meet applicable zoning requirements, we will stamp, date, and sign all three copies of the map and legal descriptions. We will retain one set of documents and return the remaining two sets to you.
4. After the Land Use Planning Division approval of the final map and legal descriptions, have a deed or deeds prepared that conveys the exchanged area from one property owner to the other. *Remember:* a Property Line Adjustment does not create a parcel; the process simply provides a method to adjust the property line between two existing properties.
5. Take your deed(s), your stamped maps, and stamped legal descriptions to the Assessment and Taxation office at 501 SE Hawthorne Blvd. Go to the **Records Management** office in Suite 125. The Records Management staff will add their department's certification to the documents. They will keep and file one set of the certified documents and will take the other set to recording for you (Room 158).
6. The cashier in room 158 will collect a fee and keep the last set of certified documents for recording. The documents will be mailed back to you after they have been recorded.
7. File a survey with the Multnomah County Surveyor's office to complete the Property Line Adjustment process. ORS 209.250 states that a survey must be filed within 45 days of setting a monument.

