



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.

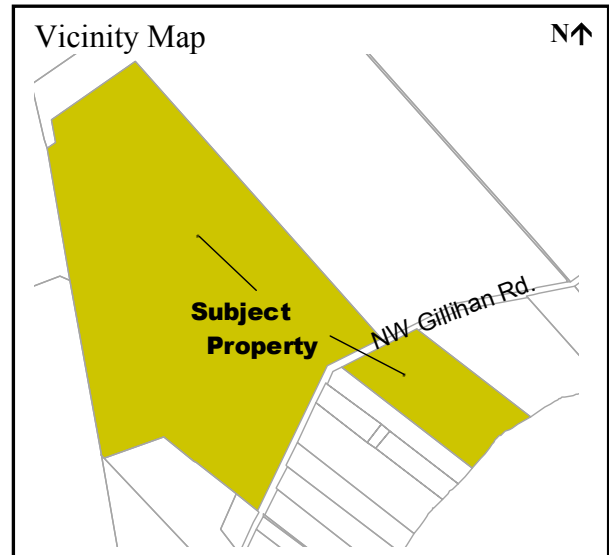
Case File: T2-04-016

Permit: Lot of Record and Lawful Dwelling
Determination

Location: 16205 NW Gillihan Rd.
2N1W22-00200, R971220050
2N1W22D-00400, R971220020

Applicant: Steve Wabnitz
2645 SW 153rd Dr.
Beaverton, OR 97006

Owner: Robert and Mary Schick
16205 NW Gillihan Rd.
Portland, OR 97231



Determination: Parcel 2 of LA 1-91 will become a Lot of Record when that approval is fully implemented. Full implementation of LA 1-91 requires the 1.39 acre Tax Lot 1300 of map 2N1W22D to be combined by deed with the 11.20 acre Tax Lot 300, of map 2N1W22. Pending full implementation of LA 1-91, an unapproved partition that involves said Tax Lot 1300 and Tax Lot 200 exists, and neither qualifies as a Lot of Record. §
The dwelling was lawfully established as a dwelling in conjunction with farm use on the Lot of Record that contains 114 acres and consists of Parcel 2 of Lot Line Adjustment LA 1-91. §

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

Issued by:

By: _____

Chuck Beasley, Planner

For: Karen Schilling - Planning
Director

Date: Friday, July 16, 2004

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence associated with the 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 Chuck Beasley, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was issued 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 **Friday, July 30, 2004 at 4:30 pm**.

Applicable Approval Criteria: Multnomah County Code for the Sauvie Island Multnomah Channel Rural Plan Area MCC 34.0005(L)(2) lawfully established dwelling definition, 34.0005(H)(1) “habitable dwelling” definition, 34.0005(L)(12) Lot of Record definition.

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/dscd/landuse>.

DECISION OF THE PLANNING DIRECTOR

(Formatting Note: Staff provides findings referenced here as necessary to address Multnomah County ordinance requirements. The heading for each finding is underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses by the applicant or their representative are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “Staff” precedes the comments.)

Findings of Fact

1. The applicant has requested a Lot of Record determination for Tax Lot 200, T2NR1W Section 22, and Tax Lot 400 2N1W22D, and has requested a determination that the dwelling on Tax Lot 200 is a lawfully established dwelling. Tax Lot 200 is located on the west side of Gillihan Road, and is shown on the Tax Assessor’s map as containing 100.45 acres. Tax Lot 400 is located on the east side of Gillihan Road, and is shown as containing 14.04 acres. The property owner has authorized the request by signing the application form.
2. Multnomah County Code (MCC) section MCC 37.0740 authorizes the Planning Director to decide all questions of interpretation or applicability of any provision of the comprehensive framework plan, rural area plan, or other land use code, to specific properties. This Lot of Record and lawful dwelling request is authorized under this provision and has been processed as a Type II application as required therein.
3. The property was part of a lot line adjustment application, LA 1-91, that was approved in November of 1991. The approved new property description for the subject property, Parcel 2 of LA 1-91 received zoning approval on February 15, 1991, and the deed with the new description was recorded March 13, 1991 in the deed records of the County at Book 2393 page 1176.
4. The property line adjustment decision LA 1-91 is a final land use decision. That decision was based on provisions that included a requirement that the properties were Lots of Record pursuant to MCC 11.15.2017 and 11.15.2018 (1990). Although there have been changes to the Lot of Record statutes since this approval, staff finds that the current provisions contain the same substantive provisions. Staff therefore finds that Parcel 2 qualifies as a Lot of Record as determined in LA 1-91 and as shown on the approved Record of Survey approved by the County on February 15, 1991.
5. The adjustment decision LA 1-91 has not been fully implemented at this time. Staff understands that the decision is intended to correct an unapproved partition of a part of Parcel 2 and this has not been completed. The unapproved partition occurred when a deed was recorded that separated the 1.39 acre Tax Lot 1300 2N1W22D from the then 62 acre Tax Lot 5 (now TL 200). The improper deed was recorded May 2 1990 at Book 2297 page 1466 & 1467. At that time, the EFU district required new parcels to be 76 acres in size, and the partition required approval through the Land Division Code. The decision LA 1-91 provided for a remedy to the improper land division through incorporation of Tax Lot 1300 into Tax Lot 300 to the north, however this has not been accomplished at this time. Until such time as LA 1-91 is completed, an improper land division of Tax Lot 200 (Parcel 2 of LA 1-91) exists, and that tract is therefore not a Lot of Record.

6. The decision LA 1-91 was partially implemented by gaining approval of the map showing the reconfigured Parcels 1 and 2, and by recording the approved deed descriptions. Staff finds that this is enough implementation of the decision to allow the parties to complete LA 1-91 as approved. When Tax Lot 1300 2N1W22D is combined by deed into Tax Lot 300 2N1W22, LA 1-91 will be complete and Parcel 2 as shown therein will be a Lot of Record.
7. The applicant has requested a determination of whether the dwelling located on the western portion of the property, Tax Lot 200, is a lawfully established habitable dwelling as defined in MCC 34.0005 Definitions, subsections (H)(1) and (L)(3). The dwelling was authorized as a "resource related residence" in the EFU zone through approval of a farm management plan in County casefile PRE 9-91. The dwelling was approved in May of 1991 on a 114 acre Lot of Record described as Parcel 2 of lot line adjustment LA 1-91. The County subsequently issued a building permit for placement of a manufactured home on the property in October of 1991. In order for a dwelling to be lawfully established under a farm management plan approval, the farm management plan must have been implemented. The plan was to raise a variety of crops in differing amounts based on soil capability and market prices. The applicant has submitted a letter dated April 5, 2004, that describes the farm activities that were done to implement the plan. Staff observed the property on 6/11/04 and found that the property is in farm use. Based on the County approvals and the applicant's implementation of the farm plan, staff finds that the dwelling was lawfully established pursuant to MCC 34.0005(L)(3).

The applicant has submitted evidence in the form of photographs of the intact exterior of the dwelling, and of the heating system, kitchen sink, bathing facilities, and wiring as evidence that the dwelling is a habitable dwelling. He has also submitted a septic system inspection record as evidence that the dwelling is connected to a sanitary waste disposal system. This evidence demonstrates that the dwelling contains all of the features required under (H)(1), therefore staff finds the dwelling is a habitable dwelling.
8. Upon receipt of a complete application, notice of the application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750-feet of the subject tract (**MCC 37.0530(B)**). No written comments were received in response to the notice.

Conclusion

Based on the findings above, staff concludes that Parcel 2 of LA 1-91 will become a Lot of Record when that approval is fully implemented. Full implementation of LA 1-91 requires the 1.39 acre Tax Lot 1300 of map 2N1W22D to be combined by deed with the 11.20 acre Tax Lot 300, of map 2N1W22. Pending full implementation of LA 1-91, an unapproved partition that involves said Tax Lot 1300 and Tax Lot 200 exists, and neither qualifies as a Lot of Record. §

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Exhibits

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be

found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

<u>Exhibit</u>	<u>Description</u>
A.	Record of Survey for approved lot line adjustment LA 1-91 2 pages.
B.	Approved deed description for Parcel 2, Book 2393 page 1175 & 1176.
C.	MCC 11.15.2017 effective 2/20/90.
D.	Deed creating TL 1300 Book 2297 page 1466 & 1467.
E.	Farm Management Plan Implementation, letter dated 4/5/04, approved plan and maps.
F.	Building permit records.
G.	Photographs of existing dwelling.