



## 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)

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# NOTICE OF DECISION

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

**Case File:** T2-04-053

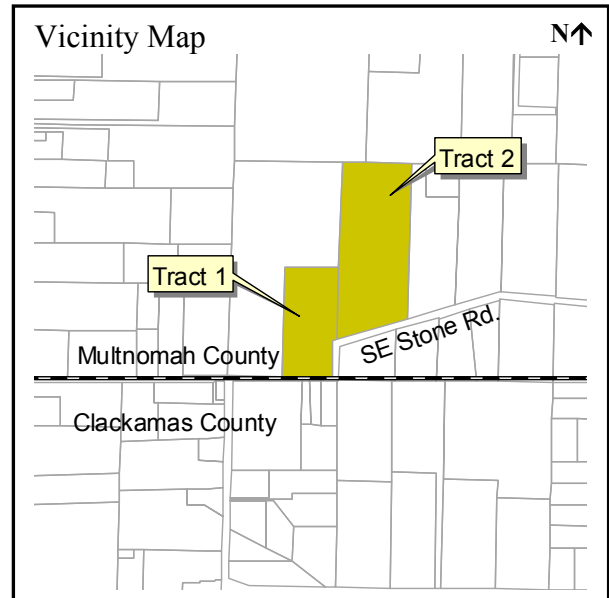
**Permit:** Property Line Adjustment

**Location:** 29197 SE Stone Road  
TL 600 & 500, Sec 19, T1S, R4E,  
Tax Account #R994191320 &  
#R994191240

**Applicant:** Andrew Collmer  
29197 SE Stone Road  
Boring, OR 97009

**Owners:** Andrew Collmer  
29197 SE Stone Road  
Boring, OR 97009

Grace Lenarwick  
11 Meadow Court  
San Mateo, Ca 94403



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**Summary:** To adjust the common property line between Tax Lots 600 and 500 so that the existing barn on Tax Lot 600 meets the dimensional setback requirements.

**Decision:** Approved With Conditions.

Unless appealed, this decision is effective, Friday, September 3, 2004 at 4:30 PM.

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Issued by:

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

For: Karen Schilling- Planning Director

Date: Friday, August 20, 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 Friday, September 3, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 37.0560 - Code Compliance And Applications; MCC 36.0005(L)(13) – Lot of Record; MCC 36.2620 - Allowed Uses; MCC 36.2660 - Dimensional Requirements; MCC 36.2670 - Lot Line Adjustment; MCC 36.2675 - Lot of Record; MCC 36.7970 - 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).

### **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 9. 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).**

#### **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:** 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 applicants are proposing to exchange a portion of property along the common boundary to provide at least 20-foot distance from the new line to an existing building that when built, did not meet the required dimensional setbacks.

2. **Site Characteristics**

**Staff:** The subject lots are both zoned Exclusive Farm Use (EFU) and are well below the minimum lot size of 80-acres. Tract 1 contains a dwelling and two barn structures that are being used for farming purposes. Tract 2 is vacant but in farm use. Both lots are currently in farm deferral. Both properties also have road frontage onto Stone Road.

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 mailed to property owners within 750-feet of the property lines on July 20, 2004. One written comment was received in support of the application.

*Procedures 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:** Multnomah County Assessment and Taxation records show Andrew and Janine Collmer as the owner of tax Lot 600 and Grace Lenarwick as the owner of Tax Lot 500 (Exhibit 1). Both Andrew Collmer and Grace Lenarwick signed the General Application Form authorizing an action to be taken on the property (Exhibit 2).

*Criterion met.*

5. **The Application Brings The Subject Property Into Full Compliance With Applicable Codes**

**MCC 37.0560 Code Compliance And Applications.**

**Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, 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) 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 Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement;**

**Staff:** Currently, property known as Tax Lot 600 has a barn, known as Barn 1, that was built over the common property line between the two subject properties. Barn 1 is noted on the 1968 Tax Assessors card (Exhibit 3) and is indicated as being used for farm use and beef cattle. Zoning was in effect in the late 1960's and therefore so were setbacks. Barn 1 qualifies as an exempt farm building but encroached into the required dimensional setbacks. The result of this Property Line Adjustment will be to increase the setback to a minimum 20-feet, which meets the 10-foot EFU side yard setback.

A second barn, known as Barn 2, crosses over the property line into the right-of-way. The Tax Assessors card indicates the barn was built in 1952, which predates zoning and setback requirements. Therefore, Barn 2 is not subject to the setback requirements.

*Criterion met.*

6. **Property Line Adjustments Are Allowed In The Exclusive Farm Use Zoning District.**

**MCC 36.2615 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 36.2620 through 36.2630 when found to comply with MCC 36.2660 through 36.2690.**

\* \* \*

**MCC 36.2625 Review Uses.**

**(L) Lot Line Adjustment pursuant to the provisions of MCC 36.2670.**

**Staff:** Property line adjustments are a listed Review Use allowed in the district.

*Criterion met.*

**7. The Proposed Property Line Adjustment Meets The Exclusive Farm Use Dimensional Requirements.**

**A. MCC 36.2660 Dimensional Requirements.**

**(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:** The structure that currently is within the side yard setback will meet the 10-foot setback after completion of the Property Line Adjustment.

*Criterion 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 yard requirements not otherwise established by Ordinance.**

**Staff:** Under MCC 36.7970(C)(3), the County has interpreted that only the newly adjusted line needs to meet the required setbacks. With this interpretation, this criterion is not applicable since the line being adjusted is not adjacent to the right of way.

*Criterion met.*

**C. (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff:** The applicant has submitted certification form for the On-Site Sewage Disposal and the sanitarian has signed the form certifying that the existing septic system will not be affected by the property line adjustment. There is no new development and therefore storm water review is not required.

*Criteria met.*

7. **The Proposed Configuration Meets The Property Line Adjustment Approval Criteria.**

A. **MCC 36.2670 Lot Line Adjustment.**

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

- (1) All dwellings that were situated on the same lot prior to the adjustments must remain together on the reconfigured lot; and**
- (2) The dimensional requirements of MCC 36.2660 (A) and (C) are met; or**
- (3) The reconfigured lot areas will each retain the same lot area that existed prior to the exchange.**

**Staff:** The dwelling that is on Tax Lot 600 will remain on Tax Lot 600 after the exchange. Tax Lot 500 is vacant and does not have a dwelling. The minimum lot size MCC 36.2660(A) is not met since both lots are well below the 80-acre minimum lot size. However, as shown on the tentative plan, both lots will retain the same lot area after the adjustment as before the adjustment. This is an equal area exchange.

*Criterion met.*

B. **MCC 36.7970 Property Line Adjustment (Lot Line Adjustment)**

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

- 1. **(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.**

**Applicant:** An additional lot is not created and existing lot areas are not changed by this line adjustment because equal areas are maintained by the adjustment. The adjustment is allowable because equal areas are being exchanged. The over all area of each parcel is not changed.

**Staff:** The two subject properties have a common property line that is proposed to be adjusted. No additional lot is created as a result of this property line adjustment.

Both properties involved are well below the 80-acre minimum lot size prior to the adjustment and after the adjustment.

*Criterion met.*

2. **(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.**

**(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.**

**Applicant:** No additional lot or parcel is created. Consent to the change has been given by both owners. Dimensional requirements have been met because equal land is being exchanged. Setbacks to the front, side, and back of the one building are to current building code laws.

**Staff:** No additional lot is being created as a result of this property line adjustment as seen on the tentative plan (Exhibit 4). The owners of the properties involved, Andrew Collmer and Grace Lenarwick, have signed the Statement of Property Owner Consent form (Exhibit 5). Staff found under Finding #6 that the new property line meets the dimensional requirements of the zoning district. Stone Road does not have the required Right-of-Way under the County Standards. However, no new development is proposed and requiring the dedication of additional Right-of-Way would not meet the Dolan test. Conveyance of the property and recording of this conveyance is addressed with a condition of approval.

*Criteria met.*

8. **All Properties Involved Are Lots Of Record**

A. **MCC 36.0005(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:**

For the purposes of this definition, Tax Lot 500 is a part of an aggregated group of properties that forms a tract of land that must be reviewed for compliance with this provision under the EFU definition of Lot of Record.

**Tract 1**

Tax Lot 600: A deed was submitted for property known as tax Lot 600 that was recorded on October 1, 1964 in Book 142, Page 202 that describes the property in its current configuration. In 1964, the property was zoned Suburban Residential, which had the requirements of a 40,000 square foot minimum lot size, access to a street, and 50-feet of frontage. When created in 1964, the subject lot was 4.79-acres, had direct access to Stone Road, and had well over 50-feet of road frontage. Therefore the property met zoning requirements at the time it was created.

Land partition rules for three or fewer lots in a calendar year were not in place until October 19, 1978, therefore the property met the land division rules in place at the time it was created.

**Tract 2**



For the purposes of this definition, Tax Lot 500 is a part of a Tract of land that includes Tax Lots 100 and 200, and must be reviewed for compliance with this provision under the EFU definition of Lot of Record.

Tax Lot 500: Property known as Tax Lot 500 was created in 1965 by contract and is found in the County records. In 1965, the property was zoned Suburban Residential, which had the requirements of a 40,000 square foot minimum lot size, access to a street, and 50-feet of frontage. When created in 1965, the subject lot was 9.73-acres, had direct access to Stone Road, and had well over 50-feet of road frontage. Therefore the property met zoning requirements at the time it was created.

Tax Lot 100 and 200: Property known as Tax Lots 100 and 200 are actually one piece of property. A contract created the combination of Tax Lots 100 and 200 in early 1965. A Trust Deed was then recorded on June 21, 1965 for Tax Lot 100. However, a Trust Deed does not create a possessory interest and does not divide property. It is merely an instrument for a lending institution that allows for a controlling interest in that particular described portion of property of the greater property. Therefore, for the purposes of the definition of Lot of Record, it was still one piece of property. As such, Tax Lots 100 and 200, as one piece of property, were created by the same contract as tax Lot 500 in 1965.

In 1965, the area was zoned Suburban Residential, which had the requirements of a 40,000 square foot minimum lot size, access to a street, and 50-feet of frontage. When created in 1965, the subject lot was 5-acres, had direct access to Stone Road, and had well over 50-feet of road frontage. Therefore the property met zoning requirements at the time it was created

Tax lots 500, 100, and 200 were all created in 1965. Partition requirements for parcels were not in place until October 19, 1978. With no partition requirements in place when all the properties were created, the properties met all land division rules at the time they were created.

*Criteria met.*

**B. MCC 36.2675 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**

**(2) A group of contiguous parcels or lots:**

**(a) Which were held under the same ownership on February 20, 1990; and**

**(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

**1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally**

**created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area.**

**2. An exception to the 19 acre minimum lot size requirement shall occur when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.**

**Staff:** Below are the findings for each involved property:

**Tax Lot 600:** Property known as Tax lot 600 was not contiguous to another property under the same ownership on February 20, 1990.

**Tax Lots 500, 100 and 200:** Property known as tax lots 500, 200 and 100 were all in common ownership on February 20, 1990 and therefore must be considered in combination for Lot of Record purposes. All lots are still in the same ownership and when considered in combination, equal 15.73-acres.

Because all lots were lawfully established and meet the EFU definition of Lot of Record, all properties are considered Lots of Record.

*Criteria 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**

1. Multnomah County Assessment and Taxation Record
2. General Application Form
3. Tax Assessors Card
4. Tentative Site Plan
5. Statement of Property Owner Consent
6. On-site Sewage Disposal Form
7. Tract 1 Deed of Creation
8. Tract 2 Deed of Creation
9. Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment"