



## MULTNOMAH COUNTY OREGON

### LAND USE AND TRANSPORTATION PROGRAM

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

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[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:** T2-04-087

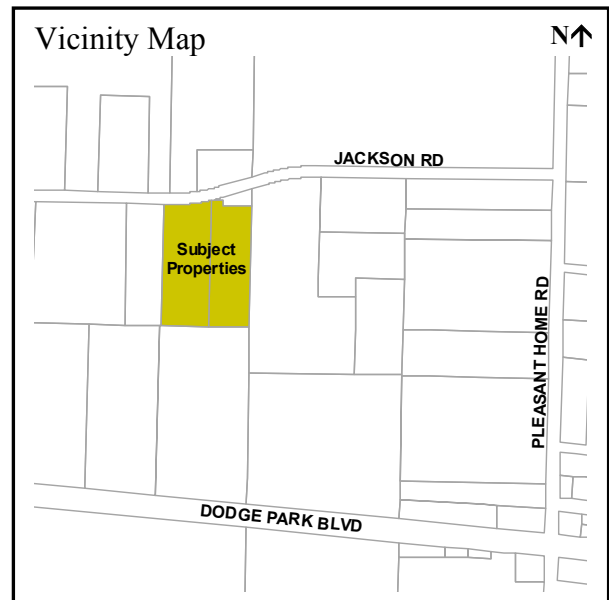
**Permit:** Lot of Record Determination

**Location:** 31100 SE Jackson Road  
TL 1100 & 1300, Sec 20BA, T1S, R4E  
Tax Acct #R994201600 & R994200600

**Applicant:** Marlene Hawes  
31100 SE Jackson Road  
Gresham, OR 97080

**Owners:** Tax Lot (TL) 1100  
Marlene and Ian Hawes  
31100 SE Jackson Road  
Gresham, OR 97080

Tax Lot (TL) 1300  
Jill and Dale Nix  
31100 SE Jackson Road  
Gresham, OR 97080



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**Summary:** A request for determination as to whether or not the two properties described are separate Lots of Record, individually eligible for development within the Multiple Use Agriculture (MUA-20) zone district.

**Decision:** The properties described as TL 1100 and TL 1300 are separate Lots of Record.

Unless appealed, this decision is effective Wednesday, December 1, 2004 at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Derrick Tokos, Principal Planner

For: Karen Schilling- Planning Director

Date: Wednesday, November 17, 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 Derrick Tokos, 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, December 1, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 35.0005(L)(13), Definitions, Lot of Record; MCC 36.2800 through 36.2885, Multiple Use Agriculture (MUA-20) zone district; MCC Chapter 37, Administration and Procedures.

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).

**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 of Fact**

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

### 1. **Proposal**

Staff: The applicant has requested a lot of record determination under Multnomah County Code sections 36.0005 (L)(13) and 36.2870. These sections are set forth below, along with the applicant’s statements regarding compliance and the Planning Director’s findings.

### 2. **Site Characteristics**

Staff: The subject properties are adjacent to each other, located on the south side of Jackson Road about ½ mile east of 302<sup>nd</sup> Avenue. The piece identified as TL 1100 is approximately 2.5 acres, and is developed with a single family residence. Its address is 31100 SE Jackson Road. TL 1300, to the east, is roughly 2.05 acres in size and is undeveloped pasture land. Both properties are zoned Multiple Use Agriculture (MUA-20), which allows rural residential and agricultural uses. A copy of the current County Zoning map showing this designation and 2002 aerial photograph illustrating the developed condition of the properties is included in the case record.

### 3. **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: Applications for lot of record determinations are classified as a Type II permit applications (MCC 37.0530). As such, they may only be initiated upon written consent of the property owner or contract purchaser (MCC 37.0550). County assessment records identify Marlene and Ian Hawes as the owners of TL 1100 and Jill and Dale Nix as the owners of TL 1300. Marlene Hawes and Jill Nix signed the application form for this request, satisfying this requirement (Exhibit A1).

### 4. **TL 1100 and TL 1300 Qualify as Separate Lots of Record under MCC 36.0005(L)(13)**

#### **MCC 36.0005 (L)(13), Definitions, Lot Of Record**

**As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.**

\* \* \* \*

**(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.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

*(Excerpt from July 29, 2004 letter from Dominic Colletta, Attorney)*

*In order to assure that a complete record was available for review, chain of title reports for the Hawes Parcel and the Nix Parcel were requested from First American Title Company of Oregon, and the records of our clients were reviewed. That record establishes that the separate Hawes and Nix Parcel were created by the following transactions:*

1. *Marlene Hawes and her husband, Charles Hawes entered into a land sale contract with George Kim and Betty B. Kim for the purchase of what was then a single parcel dated March 20, 1967 and recorded in Book 554, Page 1524 and 1525 of Multnomah County records. A copy of this contract is enclosed.*

2. *By deed dated January 9, 1968, recorded in Book 599, Page 1550 of Multnomah County Records, George Kim and Betty B. Kim conveyed to Charles A. Hawes and Marlene A. Hawes, husband and wife, "The W. 2 ½ acres of the following described property \*\*\*\*" (Tax Lot 1100, the current Nix Parcel). By laws then in effect, this deed had the effect of dividing the property originally owned by George and Betty Kim into two parcels, one owned by Mr. and Mrs. Hawes, and the other retained by Mr. and Mrs. Kim. A copy of this deed is also enclosed.*
3. *More than five years later, by deed recorded in Book 1033, Page 782, George and Betty Kim conveyed to Charles and Marlene Hawes the remaining portion of the property. A copy of that deed is enclosed. Although this deed appears to describe the combined metes and bounds of the two separated parcels, but it is elementary title law that you can only convey the title you actually possess. Since the "W. 2 ½ acres" was conveyed five years earlier, this deed is only effective as to the separate 2.05 acres comprising the Hawes Parcel.*

*If a snapshot of the title of the properties had been taken at the time of the recording of the 1968 deed, it would have revealed two separate, legally created parcels held by different owners. Prior to enactment of the subdivision and partition statutes in 1973, creation of separate legal parcels or lots was performed exactly in the manner demonstrated by the 1968 deed, by deeding off a portion of property owned. The two parcels remained in separate ownership until delivery of the 1973 deed from the Kims to Mr. and Mrs. Hawes, which was recorded in 1976.*

Staff: Copies of the deeds referenced by the applicant are included in the case record. Staff agrees that the 1967 sale contract, the deed recorded in 1968 and the deed recorded in 1973 created two separate legal parcels, one measuring 2.5 acres (tax lot 1100) and one measuring 2.05 acres (tax lot 1300). These transactions resulted in the creation and transfer of two separate parcels from George and Betty Kim to Charles and Marlene Hawes.

Tax lot 1100, measuring 2.5 acres, was expressly described in the 1968 deed that legally conveyed the parcel from the Kims to the Hawes. When TL 1100 was created as a separate parcel by this deed, the remainder, TL 1300, also became a separate legal parcel. This remainder piece was later conveyed from the Kims to the Hawes in 1973. At the time the deeds were recorded in 1968 and 1973, the property was zoned Suburban Residential (SR). A copy of the relevant zoning map is attached (Exhibit A2). While that map does not show the tax lots in their present configuration, the October 6, 1977 zoning maps, used to adopt the current Multiple Use Agriculture (MUA-20) zoning, shows the tax lots (Exhibit A3). In the SR district, the applicable zoning laws required new parcels to be at least 40,000 square feet in size (Ord. #100, §3.1531). TL 1100 is 2.5 acres and the remainder parcel, TL 1300, is 2.05 acres. In addition, newly created parcels were required to have frontage along a public roadway (Ord. #100, §3.1536). Each of these has frontage along SE Jackson Road. Staff finds that TL 1100 and 1300 met all applicable zoning laws in effect at the time they were created. (Staff notes that the 1973 deed contains a property description that describes the entire 4.55 acres encompassed by the two parcels but, as the applicants point out, the Kims did not own TL 1100 and, therefore, could not have transferred it.)

Staff also finds that the parcels were created by deed dated and signed by the parties to the transaction and recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978. Accordingly, tax lots 1100 and 1300 satisfied all applicable zoning laws and all applicable land division laws at the time they were created.

ORS 92.017 provides that a parcel that is lawfully created remains a lawful parcel until it is further divided or the parcel lines are vacated as provided by law. The deed history for these parcels show that the Hawes divorced in 1976 and the court ordered a disposition of their property. These parcels

were apparently given to Marlene Hawes. Two separate deeds were recorded reflecting this change. The first (book 1115, page 1043) transfers the parcels from Charles and Marlene to just Marlene, and the second from just Charles to Marlene. It is unclear why the Grantor and Grantee are different on each deed, but it seems reasonably clear that the purpose of these deeds was simply to vest ownership solely in Marlene and take Charles name off the title. Each deed contains a property description that describes the entire 4.55 acres containing the two parcels, but in light of the circumstances - two separate deeds were recorded, the deeds were in response to a property settlement, Ms. Hawes has submitted testimony that she did not intend to consolidate the parcels (Exhibit A4), and there was no conveyance to a third party - leads staff to conclude that the parcels were not consolidated and retained their separate legal status. Again, the purpose of the 1976 deeds was simply to remove Charles Hawes from the title.

The same is true for the deed recorded in 1986 (book 1938, page 692). It also states that it was recorded pursuant to the property settlement ordered by the court and simply changes the name on the deed from Marlene Hawes as trustee, to Marlene Hawes herself. There is no property conveyance or evidence of intent to vacate the property lines and the deed simply relies on the property description used in the earlier deeds.

Finally, in 1998 (inst# 98169381) Marlene Hawes recorded a deed for these parcels that added her son (Ian Hawes) to the title. The apparent purpose of this deed was to add Ian Hawes to the title and, again, simply used the property description in the earlier deeds. In the same way the 1976 deeds removed Charles Hawes from any ownership interest in these parcels, this deed adds Ian. While the effect of these deeds may have changed ownership interests within the family, there was no change to the legal status of the parcels under ORS 92.017. The property has never been further divided and there is no record of any affirmative action taken to consolidate the parcels. To the extent the combined property description is confusing, the applicant has filed a correction deed under ORS 204.244 to clarify the legal descriptions of TL 1100 and 1300. Considering the above, this criterion is satisfied.

#### **MCC 36.2870 Lot of Record.**

**(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.**

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, 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.**

**(D) The following shall not be deemed to be a lot of record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

Staff: As described above, tax lots 1100 and 1300 met all applicable zoning and land division laws in effect at the time they were created and are legal lots of record. At the time they were created, tax lots 1100 and 1300 were zoned SR. Each parcel is larger than the 40,000 square foot minimum required in the zone. These parcels were not created (1) solely for assessment and taxation purposes, (2) by the foreclosure of a security interest, or (3) by court decree. This criterion is met.

## **5. Public Comments Received in Response to this Application:**

Staff: On October 25<sup>th</sup>, 2004 public notice was mailed to surrounding property owners, neighborhood associations, and other interested parties as required by MC 37.0530. The notice included a brief description of the application and listed the applicable approval standards. It also indicated a timeframe within which comments would be accepted, that being no later than November 8<sup>th</sup>, 2004. Two letters were received in response to the notice, both of which were timely filed.

In a letter dated October 26, 2004 Westley Kuns, a neighboring property, asked that the County process be fair and that the rules not be broken or bent to allow a second parcel and dwelling (Exhibit A5). The Lot of Record findings above address this concern, explaining how the deed history shows that two parcels have existed since 1968. Mr. Kuns is also concerned that TL 1300 be of sufficient size to accommodate a dwelling. The SR zoning in effect at the time established a minimum lot area of 40,000 square feet for development purposes. At 2.05 acres TL 1300 exceeds that minimum threshold. While the current MUA-20 zoning has a 20 acre minimum lot size (MCC 36.2855(A)), it also recognizes smaller parcels that satisfied the laws in effect at the time they were created as "lots of record" on which a single family dwelling can be constructed (MCC 36.2820(A)). TL 1300 falls into the latter category.

A second letter, received November 8, 2004 from Gus and Adrienne Miller, the neighbor to the east, asks that the County require the applicant survey the property prior to development in the event that Tax Lot 1300 is determined to be a separate parcel (Exhibit A6). Their concern is that there is no fence separating this property from their ¼ acres piece to the northeast and that they do not want development to encroach onto their land. The scope of this application is limited to a determination as to whether or not TL 1100 and TL 1300 are separate parcels and, as discussed above, the deed records for the properties are adequate for the County to make this determination. No survey is needed. However, this does not mean that future development can encroach across property boundaries. The MUA-20 zone district requires buildings be setback a fixed distance from property lines (MCC 36.2855) and it is the property owners responsibility to accurately establish the location of those lot lines on the plans they submit to the County prior to development. Mr. and Mrs. Miller also note that they had a property line adjustment application involving their ¼ acre property that was denied in May of 2002; however, it is unclear how this is relevant to the present application.

## **Conclusion**

Based on the findings and other information provided above, the properties described as TL 1100 and TL 1300 are separate Lots of Record, individually eligible for development within the Multiple Use Agriculture (MUA-20) zone district.

## **Exhibits**

All materials submitted by the applicant, prepared by county staff, or provided by members of the public relating to this request are adopted as exhibits hereto and may be found as part of the permanent record for this application. Exhibits referenced in this decision are described below:

| <u>Label</u> | <u>Pages</u> | <u>Description</u>                                          |
|--------------|--------------|-------------------------------------------------------------|
| A1           | 1            | Application form                                            |
| A2           | 1            | 1962 zoning map                                             |
| A3           | 1            | 1977 zoning map                                             |
| A4           | 1            | Affidavit from Marelene Hawes, dated October 20, 2004       |
| A5           | 1            | Letter from Westley Kuns, dated October 26, 2004            |
| A6           | 1            | Letter from Gus and Adrienne Miller, dated November 8, 2004 |