

**MULTNOMAH COUNTY****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.

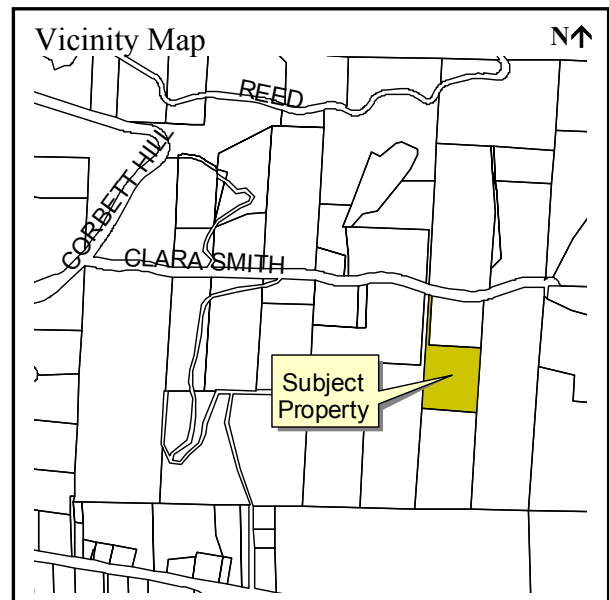
Case File: T2-05-096

Permit: Administrative Decision By The
Planning Director

Location: 37418 NE Clara Smith Road
TL 300, Sec 26DC, T 1N, R 4E, W.M.
Tax Account #R94426-0800

Applicant: Dale Burkholder

Owner: Harlan & Penny Halvorson



Summary: Applicant is requesting a Planning Director's Decision that the subject property in the GGR-5 zone is a legal "Parcel" as specified under MCC 38.0015(P)(1).

Determination: The subject 2.85 acre property is a "Parcel" pursuant to MCC 38.0015(P)(1).

Unless appealed, this decision is effective Friday, December 16, 2005, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, December 2, 2005

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 Lisa Estrin, 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 38.0640. 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 Columbia River Gorge Commission 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, December 16, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 38, specifically MCC 38.0015(P)(1) Definitions – Parcel, MCC 38.0510 through MCC 38.0800 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.

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 38.0690, 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 38.0690 and 38.0700. 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 brackets.

1. Within 6 months of the issuance of this decision, the property owners shall record a new legal description describing Parcel I and II as a single parcel. The new legal description shall be a metes and bounds description and not refer to a Parcel I or II. [MCC 38.0015(P)(1)]
2. Upon recordation of the new deed and legal description, the property owner shall provide a copy of the recorded document to Land Use Planning to show compliance with Condition No. 1. [MCC 38.0015(P)(1)]

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

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Description of Proposal:

Applicant: January 4, 1965 Sidney and Bertha Bartels sold on contract to Robert and Lorraine Jones 4.85 ac. parcel with the agreement to deed over 1 ac at the time Jones arranged for a building loan. See exhibit “A” attached. This provision in the contract was to provide a part of the parcel to be secured by a mortgage for building which was typical for the times and foreseen by the parties to the contract.

November 10, 1966 the Jones secured a mortgage through the Oregon Veterans Affairs. At this time a mortgage lot was created on the 4.85 ac site for security of the loan to build the house. See exhibit “B” attached. Then a tax account # was assigned. The balance of the property still under contract with Bartels was paid off on June 19, 1969 and a deed was granted to Jones. See exhibit “D” attached. Please see exhibit “E&F” noting corrections, to the original parcel, one in 1970 and one in 1971. At this time you still had a disputed 4.85 ac parcel with a mortgage lot of 1.15 ac.

On June 15, 1971 agent Tom Hadley with Mayfair Realty wrote an addendum to a sale agreement between Jones and Harlan and Penny Halvorson for the purchase of the home and 2.85 acres which included the mortgage lot that Jones had created to secure the ODVA loan in November of 1966 to build the house. The Addendum states, “The true legal description of real property which shall include the house and 2.85 ac. The intent of the Seller and Buyer was for the 2.85 ac not the mortgage lot of 1.15 ac and the balance of 1.70 ac. Please see attached Listing Agreement and Addendum Exhibits G & H.

On September 14, 1971 Halvorsons purchased the home and 2.85 ac parcel from Jones with the description referring to the old mortgage lot and the balance of the true intended parcel. The tax assessor also combined the 2 descriptions to create the lot#80 being 2.85 ac. See the card exhibit “I” attached. The true intent of the parties was for the purchase of single parcel. The assessor’s maps should have been changed to remove the mortgage lot at the same time but was not. The fact that the “lot” was never deeded separately into a 1.15 and 1.70 ac parcels further shows intent of the parties to create a single parcel of 2.85 ac. At this time the Jones also created a remainder lot of 2 ac to the North. This lot was eventually sold to the Halvorsons on January 14, 1977. This lot has been recognized as a legal parcel by Multnomah County. See attached exhibit “J”. At the time Halvorsons purchased the 2.85 ac and the home the mortgage lot created by Jones to secure the ODVA loan was consolidated into one tax lot. At this time the 2 ac parcel to the North (the remaining lot) was created also. Mr. Barry Benson from A&T confirmed that consolidation of 1 parcel was created when Halvorsons purchased from Jones. The deed was using 2 descriptions in the deed yet describing 1 parcel. This may be an error on the Title Co at the time but the description does not make less than the minimum lot size required at that time and did not deed to 2 separate parcels as county code does not recognize a mortgage lot as a separate parcel.

At the time Halvorsons purchased the property and home (2.85 ac) from Jones, a Title Insurance Policy was issued through Title Insurance Company of Oregon. The Title Insurance includes all of the 2.85 ac represented in the legal description and describes as Parcel I & Parcel II. The new loan the Halvorsons received from Benj. Franklin Federal Savings and Loan Association of Portland dated Aug. 26, 1971 recorded Sept 21, 1971 was also a mortgage and was given to secure payment of \$26,350.00. This loan secured 2.85 ac parcel. See attached exhibit (Policy of Title Insurance including seven pages, please not the plat map the highlights the entire 2.85 ac in bold black lines. This again shows the “True Intent” of the parties to sell, create and convey and acquire a single parcel being 2.85 ac with the single family

home. The 2 legal descriptions were created by virtue of a mortgage lot for Jones. A mortgage does not convey any interest, it only secures interest.

1.00 Administration and Procedure

- 1.01 MCC 38.0530(B):** Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are typically 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 it's relationship to scenic, natural, cultural and recreational resources of the area. 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 Gorge Commission; the U.S. Forest Service; the Indian tribal governments; the State Historic Preservation Office; the Cultural Advisory Committee; 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, except for comments regarding Cultural Resources, which will be accepted for 20 days after the notice is mailed. The Planning Directors 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 the Columbia River Gorge Commission within 30 days after the decision is final. The decision is final the day the decision is signed by the Hearings Officer.

Staff: The subject application was submitted on September 13, 2005 (Exhibit A.1). An Opportunity to Comment was mailed to various parties including the Gorge Commission, US Forest Service and Indian Tribal Governments on September 30, 2005. Comments were received from the Friends of Columbia Gorge and US Forest Service regarding the application (Exhibit D.1 & D.2). The Friend's Comments were directed to the applicable code criteria and were made to reserve their standing in the case at this time. US Forest Service's comments were concerning cultural resources and indicated that no cultural or historical survey were required.

1.02 Proof of Ownership

MCC 38.0550 Initiation of Action

Except as provided in MCC 38.0760, 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: The subject property is identified as Tax Lot 300, Section 26DC, Township: 1 North, Range: 4 East. Assessment & Taxation records show that the land is owned by Harlan Halvorson and Penny Strauss. The property owners have granted approval for Dale Burkholder to make application for this lawful parcel determination (Exhibit A.1.). *This criterion has been met.*

1.03 MCC 38.0560 Code compliance and applications.

The County shall not approve any application for a permit or other approval, including building permit applications, 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 permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full

compliance with all applicable provisions of the Multnomah County Code.

Staff: There are no known violations at the subject site.

2.00 NSA Code Criteria

2.01 MCC 38.0015(P)(1) Definitions - Parcel:

(a) Any unit of land, satisfying all applicable land division and zoning regulations in effect on the date of creation, created and separately described by a lawful sales contract, deed, partition map or plat, or subdivision plat;

(b) A unit of land shall not be considered a separate parcel simply because it:

- 1. Is a unit of land created solely to establish a separate tax account;**
- 2. Lies in different counties;**
- 3. Lies in different sections or government lots;**
- 4. Lies in different zoning designations; or**
- 5. Is dissected by a public or private road.**

Staff: The applicant has submitted in a number of documents to support this application that Tax Lot 80, 1N4E26 was lawfully created in compliance with the zoning regulations at the time of creation and that the property is a *Parcel* pursuant to MCC 38.0015(P)(1). The following tables outline the various documents within the record:

Applicant's Exhibits			
Document Type	Date of Document	Area of Tax Lot(s) Involved	Comments
Contract	1/7/1964	TL 75 & 80 4.57 acres	<ul style="list-style-type: none">• Applicant's Exhibit "A"• Recorded in Book 205, Pages 318 & 319• Seller agrees to deed to buyer 1 acre when buyer has arranged for a building loan.• Zoning at the time was F-2 (2 acre min.)'
Note & Mortgage	11/14/1966	TL 64 1.15 acres	<ul style="list-style-type: none">• Applicant's Exhibit "B"• Recorded in Book 534, Pages 1044 & 1045• Note and Mortgage describing a TL 64 for Mortgage purposes
Tax Lot Description for Tax Lot 64	Various	TL 64 1.15 acres	<ul style="list-style-type: none">• Applicant's Exhibit "C"• Created in April 1965 from recordation of deed in Book 274, Pages 334 & 335• Consolidated in to TL 80 in 9/21/1977 by Book 814, Page 430• TL 64 canceled same day in 1977
Warranty Deed	4/16/1965	TL 64 1.15 acres	<ul style="list-style-type: none">• Applicant's Exhibit "D"• Creates a 1.15 acre property out of parent parcel composed of TL 75 & 80

			<ul style="list-style-type: none"> Recorded in Book 274, Page 335 Zoning at the time was F-2 (2 acre min.)`
Contract	6/19/1969	TL 75 & 80 4.57 acres?	<ul style="list-style-type: none"> Recorded in Book 683, Pages 971 & 972
Oregon Multiple Listing Service Residential Listing Form	June thru July, 1971	?	<ul style="list-style-type: none"> Indicates the sale of 2.91 acres Legal: Sec. 26, T.1N R4E TL 16
Closing Instructions to Mayfair Realty	No Date	TL 80	<ul style="list-style-type: none"> Conveys 1.15 acres including 20' road to which they have title And the 1.70 acres being purchased on contract from R.J. Frank Realty Co. Indicates that both legals are registered in the M. County Court House No metes and bounds description. Not a sales contract. Not in recordable form.
Addendum to the Earnest Money Agreement	7/1971	?	<ul style="list-style-type: none"> Indicates 2.85 acres to be sold True legal description to be added by Title Insurance Co. No metes and bounds description. Not in recordable form.
Tax Lot Description for Tax Lot 80	9/21/1971	TL 80 Parcel I: 1.15 ac Parcel II: 1.70 ac	<ul style="list-style-type: none"> Legal Descriptions taken from Book 814, Page 430 Describes Parcel I and Parcel II separately in one tax lot
Warranty Deed	1/21/1977	TL 75	<ul style="list-style-type: none"> Applicant's Exhibit "J" Recorded in Book 1152, Page 1258 Excludes TL 80 from area
Policy of Title Insurance	9/22/1971	TL 80 Parcel I: 1.15 ac Parcel II: 1.70 ac	<ul style="list-style-type: none"> Exhibit A describes area as Parcel I and Parcel II Map highlights area contained in TL 64 and additional area out of TL 16.
Amended Report for Title Insurance Co. of Oregon	9/2/1971	TL 80 Parcel I: 1.15 ac Parcel II: 1.70 ac	<ul style="list-style-type: none"> Exhibit A describes area as Parcel I and II

Staff has gathered the following additional information to assist in making the determination:

Staff's Exhibits			
Document Type	Date of Document	Area of Tax Lot(s) Involved	Comments
Warranty Deed	4/16/1965	TL 64 1.15 ac	<ul style="list-style-type: none"> Exhibit B.12

			<ul style="list-style-type: none"> Recorded in Book 274 Page 334 just prior to applicant's exhibit "D" (Exhibit A.6) Transfers 1.15 acres from the Reeds to the Bartels Zoning: F-2 (2 ac min. lot size)
Parcel Record for TL 16, 1N4E26	Various	TL 16 (Parent Parcel of TL 64, 75, 71, 74	<ul style="list-style-type: none"> Exhibit B.10 Shows the TL 16 was 4.85 acres in 1971 at time of Real Estate Listing (Applicant's Exhibit ?)
Parcel Record for TL 80 1N4E26	9/21/1971	TL 80 Parcel I: 1.15 ac Parcel II: 1.70 ac	<ul style="list-style-type: none"> Exhibit B.13 Shows TL 80 consists of Parcel I and Parcel II pursuant to the Warranty Deed recorded in Book 814, Page 430
Warranty Deed	9/21/1971	TL 80 & 75 4.85 acres	<ul style="list-style-type: none"> Exhibit B.14 Transferring 4.85 acres in a single parcel (Consolidates into one property) Recorded Book 814, Page 429
Warranty Deed	9/21/1971	TL 80 Parcel I: 1.15 ac Parcel II: 1.70 ac	<ul style="list-style-type: none"> Exhibit B.15 Transfers 2 Parcels out of 4.85 acre property Recorded Book 814, Page 430

From 1958 until October 5, 1977, properties south of Clara Smith Road were zoned F-2 (Exhibit B.2 & B.7). The F-2 zone had a minimum lot size of 2 acres from 1958 until December 1975 when it was changed to a variable lot size starting at 2 acres and increasing upwards depending on soil types. In 1965, 4.85 acres were sold to Mr. Jones by the Bartels on contract. On September 21, 1977 a Warranty Deed was recorded transferring the entire 4.85 acre parcel from the Bartels to the Jones (Exhibit B.14). This Bartel-Jones Warranty Deed created the 4.85 acre parent property which met the F-2 minimum lot size of 2 acres. This 4.85 acre parcel would constitute the sum of TL 75 and TL 80 combined.

The Halvorsons purchased the 2.85 acres of land and an existing dwelling on September 21, 1971 as documented in the Warranty Deed recorded in Book 814, Page 430 (Exhibit B.15). Tax Lot 80 represents that ownership. While the current legal description references a Parcel I and II, the applicant has demonstrated the intent of the buyer and seller was to transfer the properties as a single parcel. The Addendum to the Earnest Money Agreement (Exhibit A.12) indicates the following *"1. The true legal description of real property which shall include the house and 2.85 acres (more or less) shall be added when Title Ins. is prepared by the Title Ins. Co."*

The recordation of the Warranty Deed (Exhibit B.15) in September 1971 separated out a 2.85 acre property from the lawfully created 4.85 acre parent parcel there by separately describing the property. At the time, the area and subject land was zoned F-2 with a minimum lot size of 2 acres. Based upon the above information and findings, staff finds that the 2.85 acre property known as TL 80 is a *Parcel* as defined in MCC 38.0015(P)(1).

3.00 *Exhibits*

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	NSA Application Form	9/13/05
A.2	2	Narrative	9/13/05
A.3	2	Contract recorded January 7, 1964 (Book 205, Page 318 & 319) – Exhibit “A”	9/13/05
A.4	2	Note and Mortgage Recorded November 14, 1966 (Book 534, Page 1044 & 1045) – Exhibit “B”	9/13/05
A.5	1	Tax Lot Description for R944260640 – Exhibit “C”	9/13/05
A.6	1	Warranty Deed Recorded April 16, 1965 (Book 274, Page 335) – Exhibit “D”	9/13/05
A.7	2	Contract Recorded January 19, 1969 (Book 683, Page 971 & 972)	9/13/05
A.8	1	Tax Lot Description for R944260800 – Exhibit “I”	9/13/05
A.9	1	Warranty Deed Recorded January 21, 1977 – Exhibit “J” (Book 1152, Page 1258)	9/13/05
A.10	1	Oregon Multiple Listing Service Residential Listing Form	9/13/05
A.11	1	Closing Instructions – No date	9/13/05
A.12	1	Amendment to Earnest Money – No date	9/13/05
A.13	5	Policy of Title Insurance – Dated September 22, 1971	9/13/05
A.14	3	Amended Report for Title Insurance - Dated September 2, 1971	9/13/05
'B'	#	Staff Exhibits	Date
B.1	1	A&T Property Records for Tax Lot 300, 1N4E26DC	9/13/05
B.2	1	1962 Zoning Map	
B.3	3	F-2 Zoning Regulation - 1964	
B.4	3	F-2 Zoning Regulation - 1968	
B.5	3	F-2 Zoning Regulation – May 1974	

B.6	13	F-2 Zoning Regulations – December 1975	
B.7	1	October 5, 1977 Zoning Map	
B.8	1	October 6, 1977 Zoning Map	
B.9	3	Building Permit Card and Copy of Building Permit Issued in 1965 with Legal Description	
B.10	1	Parcel Record for Tax Lot 16 1N4E26	
B.11		Contract for Tax Lot 16 Recorded October 28, 1970 (Book 757, Page 911)	
B.12	1	Warranty Deed Transferring TL 64 Recorded on April 16, 1965 (Book 274, Page 334)	
B.13	1	Parcel Record for TL 80 1N4E26	
B.14	1	Warranty Deed Transferring 4.85 acres as specified under the January, 1965 Land Sale Contract Recorded 9/21/1971 (Book 814, Page 429)	
B.15	1	Warranty Deed Transferring 2 Parcels out of 4.85 acres Recorded 9/21/1971 (Book 814, Page 430)	
B.16	1	Plat Map Showing 3 Properties Referenced in Closing Instructions	
B.17	1	1983 Zoning Map – MUF-19/SEC	
B.18	1	1993 Zoning Map - GGR	
‘C’	#	Administration & Procedures	Date
C.1	1	Complete Letter – Day 1 (9/13/05)	9/28/05
C.2	1	Opportunity to Comment	9/30/05
C.3	11	Administrative Decision – Day 81	11/14/05
‘D’	#	Public Comment	Date
D.1	2	US Forest Service Comments	9/22/05
D.2	2	Friends of the Columbia Gorge	7/5/05