



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.

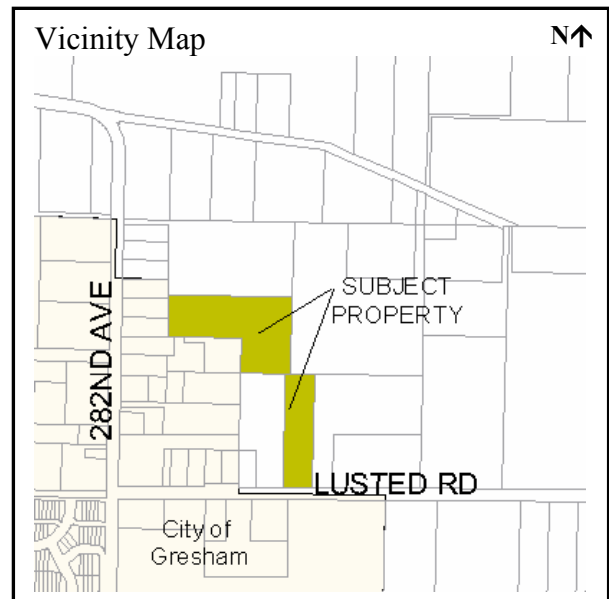
Case File: T2-05-101

Permit: Property Line Adjustment

Parcel 1: 1140 SE 282nd Ave
TL 300, Sec 18BB, T1S, R4E, W.M.
Tax Account #R994180540

Parcel 2: 28505 SW Lusted Road
TL 3000, Sec 18BB, T1S, R4E, W.M.
Tax Account #R994181460

**Applicant/
Owner:** Thomas & Pamela Masson



Summary: Property Line Adjustment to relocate the common boundary between tax lots 300 and 3000 on tax map 1S, 4E, 18BB. This action is being taken in conjunction with annexation to the City of Gresham and a partition in order to correct a land division violation created in 1973.

Decision: Approved with Conditions

Unless appealed, this decision is effective December 1, 2005, at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King, AICP,
Planner

For: Karen Schilling- Planning Director

Date: November 17, 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 Tammy Boren-King, 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 December 1, 2005 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 36.2855 - Dimensional Standards and Development Requirements; MCC 36.2860 - Lots of Exception and Property Line Adjustments; MCC 36.2870 - 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.

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. **Prior to final approval of the property line adjustment and the recordation of new deeds, the westerly 1.97 acres of tax lot 300 must be annexed to the City of Gresham and approved through a one-parcel partition. Prior to final approval of the property line adjustment, documentation regarding the approval of the annexation and the partition must be submitted to staff planner Tammy Boren-King for inclusion in the file. (MCC 36.0005(L)(13))**
2. **The property owner, or representatives thereof, shall complete the adjustment pursuant to the attached “Applicant’s Instructions for Finishing a Property Line Adjustment,” and**

“Surveyor’s Instructions for Finishing a Property Line Adjustment” included as Exhibits 11 and 12 respectively. 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**

Applicant: The Massons propose to annex a portion of their property to the City of Gresham. The portion they wish to annex is 1.97 acres of the 3.63 acres that was not annexed of the original 5.45-acre tax lot that existed in 1973. The accompanying maps represent the progression of annexation and creation of the UGB, and the resulting 3.63-acre tax lot. Because of Metro's rules regarding an adjustment of the UGB wherein not more than 2.0 acres may be included as a minor map amendment, not all of the 3.63-acre parcel can be annexed. Through discussions with the city, Multnomah County, and Metro, it is understood that 1.97 acres will be considered for annexation to the city. The parcel, if annexed, will be developed as a residential home site, the density of which will depend on the zoning applied by the city at the time of annexation.

In 1974, the City of Gresham unilaterally annexed 1.82 acres of the original 5.45-acre property, without consultation of the owner at that time. The concept of annexing only 1.82 acres of the parcel, rather than the entire 5.45 acres and thus leaving 3.63 acres remaining in Multnomah County has been lost to history. Based on the "new" city boundary, Metro created the Urban Growth Boundary along the same line, continuing to leave the "hanging" portion of the property in Multnomah County as a non-conforming parcel in the MUA-20 district. Based on its spurious circumstances of creation, the county is refusing to recognize the parcel as "lot of record" and will not issue any development permits for the property.

Staff: The proposed property line adjustment involves tax lots 300 and 3000 on map 1S 4E 18BB. These lots will be referred to as Tracts 1 and 2 respectively for the remainder of this document.

Tract 1 has been determined not to be a lot of record in case T2-03-077. This case details the history surrounding Tract 1 and how it came into its current configuration. Through a series of actions, Tract 1 was improperly divided and cannot be considered a lot of record. The proposal at hand is part of a multi-jurisdictional effort to remedy the lot of record issue presented by Tract 1. A summary of the actions to be undertaken to rectify the situation is as follows:

- The property owners will apply to the City of Gresham for annexation of 1.97 acres of Tract 1. The owners have made this application.
- The property owners will apply to Multnomah County for a property line adjustment, which is the subject of this decision. The property line adjustment will allow the property lines to be moved to correspond to the annexation proposal.
- The property owners will apply to Metro for a Minor Adjustment to the UGB.
- Multnomah County will render a decision regarding the property line adjustment, final approval of which is contingent upon approvals by Gresham and Metro.
- Metro will make an administrative decision on the UGB expansion.
- If both the UGB expansion and property line adjustment are approved, the City of Gresham staff will recommend approval of the annexation proposal to the Gresham Planning Commission. The Planning Commission will forward their recommendation to the City Council, which will hold a public hearing and render a final decision.

- If the annexation is approved, the owners will apply to the City of Gresham for a one-parcel partition. This is the step which will correct the legal issues surrounding the improper creation of the lot in 1973.
- If the one-parcel partition is approved, Multnomah County will issue a final approval for the property line adjustment to move the line between the now legalized Tract 1 and the portion of the property outside of the UGB.

The applicant's site plan, included as Exhibit 1, illustrates the current configuration and the proposed configuration. The transfer area is 1.66 acres in size. Tract 1 will decrease in size from 3.63 acres to 1.97 acres. Tract 2 will increase in size from 1.7 acres to 3.36 acres.

2. **Site Characteristics**

Applicant: The site has access by virtue of an easement that was granted to it in 1996 when the 1.82-acre portion annexed to the city in 1974. Development to the west, within the city, has sanitary sewer and water service. The property is, and always has been vacant. Topography is basically flat, with some very minor slope from west to east with an overall change of topography of perhaps two to three feet. Vegetation is limited to low shrubs and grass. Therefore, the entire 1.97-acre site is fully developable.

Staff: The subject properties are currently outside the Urban Growth Boundary (UGB) but adjacent to the UGB and the City of Gresham. The local area is a mix of urban scale residential development inside the city limits and larger rural-residential parcels outside the city limits. Most of the parcels contain houses.

Tract 1 is currently vacant. Tract 2 contains a house and an accessory building. A copy of the 2002 aerial photo of the subject site is included as Exhibit 5.

The zoning on the subject properties is Multiple Use Agriculture (MUA-20) with small areas of the lots being in the Significant Environmental Concern for Water Resources (SEC-wr), Significant Environmental Concern for Habitat (SEC-h) and Hillside Development overlays. A copy of the zoning map is included as Exhibit 4. The subject application is for a property line adjustment only. No development or ground disturbing activities are proposed as part of this application. As such, the standards of the SEC-wr, SEC-h, and Hillside Development overlays do not apply. Any future development on the portions of the property which remain outside the city limits will be subject to review under Multnomah County ordinances.

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 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 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 Friday October 28, 2005. The public comment period was open until 4:30 pm on Friday, November 11, 2005. No written comments were received.

Procedures met.

4. **Proof of Ownership**

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 Thomas and Pamela Masson as owners of both pieces of property involved with the adjustment (Exhibit 2). Thomas Masson signed the General Application Form authorizing an action to be taken on the property (Exhibit 3).

Criterion met.

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

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.

Staff: As discussed in case T2-03-077, Tract 1 is not a lot of record. This application is being undertaken as part of a larger effort to rectify the lot of record problems surrounding Tract 1. If 1.97 acres of Tract 1 is annexed to the City of Gresham and a one-parcel partition is approved, then Tract 1 will be a lot of record.

This property line adjustment will be tentatively approved with the condition that final approval is contingent upon the successful annexation and partitioning of Tract 1.

Tract 2 was created as a 2.05 acre piece in 1965 via a deed recorded in Book 247 on Page 216. (Exhibit 7) The zoning in 1965 was F2, which required a two-acre minimum lot size and 50 feet of frontage on a public road. Partitions did not require formal county review in 1965. Tract 2 was lawfully created in 1965.

The division was accomplished by excepting out tax lot 2900 from the parent parcel, which was tax lots 2900 and 3000. The remainder of the parent parcel was Tract 2. In 1981, the first deed was recorded which described Tract 2 with a meets and bounds description. This description resulted in the current lot configuration of 1.7 acres. This created a remainder of .35 acres that was included neither in Tax Lot 2900 nor in Tract 2. The 0.35 acre remainder was consolidated into tax lot 2900 to achieve its current configuration of 2.41 acres. The effect of these actions was to reconfigure Tract 2 through a property line adjustment in 1981. The County first adopted code provisions that required a zoning review of property line adjustments in 1994 through Ordinance 781. When Tract 2 was reconfigured in 1981, it was reconfigured in accordance with the laws in effect at the time.

Tract 2 is a Lot of Record.

Criteria met.

6. **Both Properties Involved Are in Full Compliance**

§ 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.

Staff: No complaints have been received regarding the subject properties. Staff performed a site visit on Wednesday, November 9th, 2005 and observed no violations of the zoning code.

Tract 1 is vacant. Tract 2 contains a house and an accessory building. The house was permitted in 1991 through permit MC 810 (Exhibit 8). The accessory building was permitted as an exempt farm structure in 1991. A copy of the exempt farm structure record is included as Exhibit 9.

With the exception of the Lot of Record issue which this property line adjustment is addressing, both properties are in full compliance.

Criteria met.

7. **Property Line Adjustments Are Allowed In The Multiple Agricultural Use Zoning District.**

MCC 36.2825 Review Uses.

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use.

(D) Property Line Adjustment pursuant to the provisions of MCC 36.2860.

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

Criterion met.

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

MCC 36.2860 Lots of Exception and Property Line Adjustments.

(B) Property Line Adjustment

Pursuant to the applicable provisions in the Multnomah County Land Division Ordinance, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

(1) No additional lot or parcel is created; and

- 8.1 **Staff:** There is currently only one lawful lot (Tract 2). As explained in Section 1 of this report, the applicants will be pursuing annexation to the City of Gresham. If the annexation is successful, the applicant will then pursue a one-parcel partition to lawfully establish a portion Tract 1 as a separate property. Tract 2 will then be reconfigured to contain the remaining property via the subject property line adjustment. If both the annexation and the partition are approved by the City of Gresham, then two lots will exist.

The property line adjustment will be tentatively approved. Final approval will not be granted until such time as the applicant can submit documentation that the final configuration of Tract 1 has been annexed to the City of Gresham and approved as a one-parcel partition. Once the partition is finalized, two lots will exist and the property line adjustment will result in a configuration that does not create an additional lot or parcel.

Criterion met with conditions.

(2) One of the following situations occurs:

(b) The lot or parcel proposed to be enlarged in area is less than 40 acres in area prior to the adjustment and remains less than 40 acres in area after the adjustment.

- 8.2 **Staff:** Tract two will be enlarged from 1.7 acres to 3.36 acres. This is less than 40 acres prior to and after the adjustment.

Criterion met.

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.

(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.

- 8.3 **Staff:** The two subject properties have a common property line as shown in the site plan attached as Exhibit 1. No additional lot is created as a result of this property line adjustment. Both properties involved are well below the 20-acre minimum lot size prior to the adjustment and after the adjustment.

Criterion met.

(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

- 8.4 **Staff:** No additional lot is being created as a result of this property line adjustment. A lot will be created via a partition approval from the City of Gresham as explained in Section 1 of this report. Once the partition is approved, making Tract 1 legal, then the property line adjustment can be finalized.

Criterion met.

(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

- 8.5 **Staff:** Thomas and Pamela Masson own both properties involved. Thomas Masson has signed the General Application form (Exhibit 3).

Criterion met.

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

Staff: The dimensional requirements of the zone require a 30 foot setback from the front and rear property lines and a 10 foot setback from the side property lines pursuant to MCC 36.2855(C). There are no structures on Tract 1. As shown on the applicant's site plan (Exhibit 1), the adjusted property line will be moving away from the structures on Tract 2. The yard dimensional requirements are currently met and will continue to be met after the proposed adjustment.

The applicant's proposal will be tentatively approved.

Criterion met.

(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.

- 8.8 **Staff:** SE Lusted Road contains 60 feet of right-of-way. The proposal has been reviewed by Alison Winter, Transportation Planner for Multnomah County. Ms. Winter has indicated in an email (Exhibit 10) that the transportation section has no concerns with the subject proposal.

Criterion 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. Site Plan
2. Assessment and Taxation Information showing current ownership (2 pages)
3. Application form signed by Thomas Masson
4. Zone Map
5. 2002 Air Photo
6. Copy of Deed from Book 2408 Page 1559 transferring ownership to Masson Family
7. Parcel Cards from Assessment and Taxation showing division history (2 pages)
8. Building permit for house on Tract 2 (2 pages)
9. Agricultural building documentation for agricultural building on Tract 2 (2 pages)
10. Email from Alison Winter, Transportation Planning Specialist
11. Applicant's Instructions for Finishing a Property Line Adjustment
12. Surveyor's Instructions for Finishing a Property Line Adjustment