



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
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<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

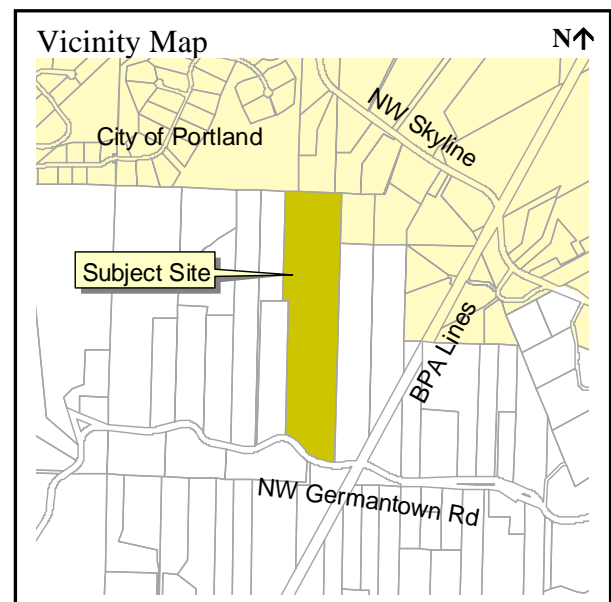
Case File: T2-06-088

Permit: Lot Of Record Determination

Location: 13715 NW Germantown Road
TL 300, Sec 9, T1N, R1W, W.M.
Tax Account #R96109-0210

Applicant: Alfred Nordgren/John Pinkstaff

Owner: Cecilia Hunziker



Summary: Determination if subject property is a Lot of Record.

Decision: The Planning Director finds that the subject property described is a Lot of Record. The subject property was created in 1950 with the consolidation of then-tax lots 10 and 21 into one metes and bounds description and later reconfigured through a Property Line Adjustment in case #T2-02-013.

Unless appealed, this decision is effective Monday, October 23, 2006, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, October 9, 2006

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, extension 29270.

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 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 Monday, October 23, 2006 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.0005(L)(13) Lot of Record; MCC 33.3170 Lot of Record

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/landuse>.

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 applicant is seeking a Lot of Record Determination to determine if the subject property is made up of one Lot of Record, or two Lots of Record as argued in their application.

2. **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 Director's decision shall become final at the close of business on the 14th day after the date on the decision.

Staff: An opportunity to comment was mailed to property owners within 750-feet of the property lines on September 12, 2006. No written comments were received.

Procedures met.

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, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.

Staff: Multnomah County Assessment and Taxation records show Cecelia Hunziker as the owner of the subject lot (Exhibit 1). John Pinkstaff represents Alfred Nordgren who is purchasing the property from Cecelia Hunziker.

Criterion met.

4. **The Property Consists Of Only One Lot Of Record**

MCC 33.0005 Definitions

MCC 33.0005(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.**

MCC 33.3170 Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

(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 33.3185, 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 33.3160, 33.3175, and 33.4300 through 33.4360, 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: The subject property consisted of two separate parcels in 1947, as demonstrated in the first two deeds submitted by the applicant (Exhibits 2 and 3). On February 21, 1950, the two separate parcels were combined and conveyed in one single metes and bounds legal description from The Marshall's to the Wiseman's. At that time, the property still contained two separate tax lots for taxing purposes only. In 1978, the property owners requested Multnomah County Assessment and Taxation combine the two separate tax lots into one tax lot. The new tax lot then contained the same legal description as the deed. A contract of sale was then drawn up to convey the single parcel described on the 1950 deed to Cecelia Hunziker and was fulfilled on September 14, 2002 as shown on the title report submitted by the applicant. The property was again described by a single metes and bounds description. In 2002, a Property Line Adjustment was completed that involved the subject parcel and the property to the west owned by the Babcocks (Case #T2-02-013 as seen in Exhibit 4). The final legal descriptions approved by the County consisted of a new metes and bounds description that described the area of the subject single parcel, minus the area of land transferred to the neighboring property.

Multnomah County Code recognizes a property as a Lot of Record if the property met the land division rules and zoning rules in place at the time it was created. In 1947, the subject property was two separate parcels described by two separate metes and bounds legal descriptions on two separate deeds. When, in 1950, a new metes and bounds description described both properties

from the 1947 deeds as one piece of property without distinction and on one deed, the parcels were consolidated into one parcel. In 1950, there were no zoning rules in place, and land division rules did not require County review for the consolidation of parcels. That description has been conveyed and remained unchanged until the 2002 property line adjustment. As a result, the property contains one, and only one, Lot of Record.

In his narrative, Mr. Pinkstaff, the representative for the applicant, argues that ORS 92.017 prevents the County from recognizing only one Lot of Record. He argues that the statute requires the County to recognize both original parcels unless there was some action on the part of the owner to erase the common property line.

ORS 92.017 states:

“92.017 When lawfully created lot or parcel remains discrete lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. [1985 c.717 §3; 1993 c.702 §2]”

This statute does not work with the argument and distinction the applicant is making for several reasons. First, the statute is directed towards parcels or lots created from a subdivision or a partition. The subject parcel was not created by either process. The parcel was created by the consolidation of two parcels into one— a common action consistently recognized by the County as terminating the original lots and forming a new one.

Second, the statute was created in 1985 with the intent to clarify when subdivision lots were altered or reconfigured. Current law requires subdivision lot lines to be vacated in order for lines to be moved for a property line adjustment. The resulting parcel has a metes and bounds legal description and no longer has the subdivision legal description.

The applicant’s argument also doesn’t work with this situation because the statute requires a clear intent. There is no evidence in the record to indicate there was an intent to keep the 1947 parcels separate and discrete when conveyed in a single legal description on a single deed twice – in 1950 and again in 1992. The lack of evidence in those transactions to keep the parcels separate and discrete only solidifies the original intent of the owners of the subject lot in 1950 to consolidate the two parcels into one discrete parcel. Similarly, the 2002 property line adjustment was an action that further bolstered the fact that the property line between the original Tax Lot 10 and Tax Lot 21 had been vacated in 1950 with the consolidation of the legal description and parcels. The same metes and bounds legal description used in the 1950 conveyance was used for the newly configured subject parcel in T2-02-013, minus the area of land transferred to the adjacent property owned by the Babcocks. Legal descriptions reviewed by the Planning Department and stamped were later recorded, finalizing the property configuration.

In case T2-04-087, a similar question existed regarding the consolidation issue. In that case, two parcels were combined into one legal description and were later broken back out and described separately on two separate deeds. The County found that the property was never consolidated and remained two separate and distinct parcels. Evidence in the case file clearly shows that the owner of the property had no intent to combine the parcels. The owner had divorced and was preparing the legal descriptions for the properties for estate planning purposes. The actions of the wife on the property were in response to a property settlement that removed the husband’s name from both properties giving the wife sole possession and later adding her children to the deeds for estate planning purposes. An affidavit submitted by the wife demonstrated how there was no intent to consolidate the properties and convey the property to another party. There was no evidence of

intent to vacate the property line – indeed, there was evidence indicating that she intended to keep the parcels separate.

The immediate case is different for several reasons. There is no evidence indicating the consolidation was not intended to take place, the property was conveyed under a single metes and bounds description twice to different parties with no notation of two parcels existing, and the property line adjustment approved in 2002 was an action that confirmed the vacation of the line between the original Tax Lot 10 and Tax Lot 21 in 1950 by using the same metes and bounds description.

Conclusion

Based on the findings and other information provided above, The Planning Director determines the subject property consists of one Lot of Record.

Exhibits

1. Multnomah County Assessment And Taxation Information Sheet
2. 1947 Deed Describing The Original Tax Lot 21
3. 1947 Deed Describing The Original Tax Lot 10
4. Notice Of Decision For Property Line Adjustment Case #T2-02-013
5. 1950 Deed That Consolidated The Parcels Into One Parcel