



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/landuse>

NOTICE OF DECISION

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

Case File: T2-07-053

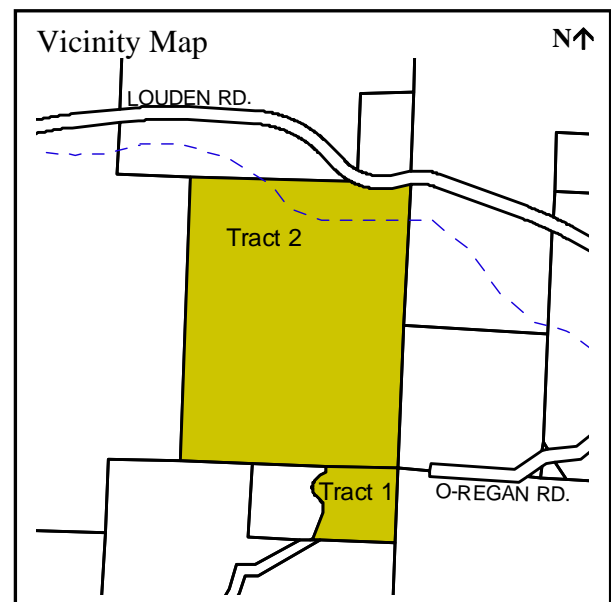
Permit: Property line Adjustment

Location
Tract 1: 2020 SE O'Regan Road
TL 100, Sec 2DD, Township 1 South,
Range 4 East, W.M.
Tax Account #R994020390 and

Location
Tract 2: 38000 SE Loudon Road
Tax Lot 100, Sec 2D of Township 1
South, Range 4 East, W.M.
Tax Account # R994020150

Applicant: Jeff & Linda Hargens

Owner: Jeffery D. and Linda D Hargens
PO Box 231
Corbett, OR 97019



Summary: Property Line Adjustment with the Tract 1 increasing in size from 2.67 acres to approximately 17.67 ac. and Tract 2 decreasing from 29.92 ac to approximately 14.92 ac.

Decision: Approved with Conditions

Unless appealed, this decision is effective September 21, 2007, at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Friday, September 7, 2007

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 George A. Plummer, Staff Planner at 503-988-3043 ext. 29152.

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 September 21, 2007 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37 Administrative, MCC 35.2200 et al: Commercial Forest Use – 4 District, MCC 35.3100 et al: Rural Residential, and MCC 35.7790: 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/landuse>.

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. **This land use permit expires two years from the date the decision is final if the 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 or 37.0700, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

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. This approval is based on submitted materials. The proposed property line adjustment shall be completed as shown and described in the application materials submitted by the applicant and as shown on Exhibit 1.2 [MCC 37.0580]. No additional lot or parcel shall be created through this process [MCC 35.7790(A)].

2. The applicant shall complete the procedures provided in the attached “Applicant’s Instructions for Finishing a Property Line Adjustment,” included as Exhibit 2.5 and in the attached “Surveyor’s Instructions for Finishing a Property Line Adjustment” included as Exhibit 2.6. [MCC 35.7790(D)]
3. Prior to recording the deeds, the property owner, or representative thereof, shall submit copies of the final survey, and legal descriptions to Multnomah County Planning for verification that the adjusted properties conform to the approved Tentative Plan Map. If the submitted documents conform with the approved Tentative Plan Map (Exhibit 1.2) and zoning requirements staff will sign the survey and deeds. Multnomah County Planning must review and sign the survey before you submit your deed(s), surveys, and legal descriptions to County Surveying and County Records Management office at Assessment and Taxation for recording [MCC 35.7770].
4. For each of the two properties, a new deed shall be filed with County Records describing the property boundaries with a metes-and-bounds description. When the process is complete the portion of property that is transferred shall be merged into Tract 1 through the deed description describing the entire property. No additional lot or parcel shall be created. [MCC 35.7790(A)].
5. This approval will automatically become void if, within two years of the date of the final decision, if the final survey or plat has not been approved by the Planning Director and recorded with County Records [MCC 37.0690]. The Planning Director may grant one extension period of up to 12 months if the request meets the requirements listed under MCC 37.0690(A).

Note: The Planning Director’s policy is for the case planner to provide zoning approval of the final Plan on an appointment basis. Please contact George Plummer at 503-988-3043 ext 29152 to set a time for zoning approval.

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.

Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described. The applicant's submittal is included and made part of this decision as Exhibit 1...

1. REQUEST FOR A PROPERTY LINE ADJUSTMENT

Staff: The applicant has requested an approval of a Property Line Adjustment with the Tract 1 increasing in size from 2.67 acres to approximately 17.67 acres and Tract 2 decreasing from 29.92 acres to approximately 14.92 acres (Exhibit 1.2).

2. SITE AND VICINITY CHARACTERISTICS

Staff: The subject properties are accessed from SE O'Regan Road and Loudon Road. The properties are located south of Loudon Road. In this rural area there is a mix of agriculture and forest lands (Exhibit 2.8). Tract 1 is within the Rural Residential Zone District and is 2.67 acres (Exhibit 2.2). Tract 2 is in the Commercial Forest Use – 4 District and is 29.92 acres. Both tracts are developed with a single family dwelling (Exhibit 2.1).

3. TYPE II CASE PROCEDURES

3.1. MCC 37.0550: Except as provided in MCC 37.0760, Type II applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment records show the property owner as Jeffery D. and Linda D. Hargens for Tract I and as the contract buyers of Tract II. (Exhibit 2.1). Mr. & Mrs. Hargens signed the application form providing the necessary authorization to process the application (Exhibit 1.1).

3.2. MCC 37.0530 (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. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: Procedures outlined in MCC 37.0530 were followed in processing this case. An opportunity to appeal this case will be provided. If no appeal is filed, the decision will become final 14 days after the date on the decision. The application was submitted May 23, 2007 and was deemed complete on July 3, 2007 when the revised plan was submitted.

An “Opportunity to Comment” notice was mailed on July 5, 2005 to all owners of property within 750 feet of the subject site. They were given a 14-day period to provide comments on the application (MCC Chapter 37). No comments were submitted.

4. LOT OF RECORD

4.1. Definitions: Lot of Record

4.1.1. MCC 35.0005– Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 35.7785. 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 Re-cording 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 Re-cord for the siting of a dwelling in the EFU and CFU districts.)**

Staff: For Tract 1 the applicants submitted a Bargain and Sale Deed dated July 31, 1969 filed in County Records in Book 703 on Pages 1282 and 1283 for the 2.67 acre property (Exhibit 1.4). The property was zoned Agriculture F-2 in 1969 and had a two acre minimum. The property satisfied all applicable zoning laws in effect in 1969. The property met that minimum when it was created. There was no land division review in 1969 for partitions. Tract 1 satisfied all applicable land division laws because the parcel was created by a deed 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. Tract 1 meets these standards to be a Lot of Record.

For Tract 2 the applicant submitted a Warranty Deed dated April 18, 1968 filed in County Records in Book 615 on Page 1039 (Exhibit 1.5) that indicates the 29.92 acre property existed as of that date. The property was zoned Agriculture F-2 in 1968 and had a two acre minimum. The property satisfied all applicable zoning laws in effect in 1968. The property met that minimum when it was created. There was no land division review in 1968 for partitions. That property satisfied all applicable land division laws because the parcel was created by a deed 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.

4.2. RR Lot of Record (Tract 1)

35.3170 (A) In addition to the *Lot of Record* definition standards in MCC 35.0005,

Staff: The standards in MCC 35.0005 are addressed in the previous finding. This standard is met. The property described as Tract 1 is a Lot of Record.

4.3. CFU-4 Lot of Record (Tract 2)

MCC 35.2275 (A) In addition to the *Lot of Record* definition standards in MCC 35.0005, 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. There shall be an exception to the 19 acre minimum lot size requirement 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: County Assessment records shows Tract 2 was not in the same ownership in 1990 as any adjacent property under 19 acres. The standards in MCC 35.0005 are addressed in the finding in Section 4.1.1 of this decision. This standard is met. The property described as Tract 2 is a Lot of Record.

5. DIMENSIONAL REQUIREMENTS

5.1 RR Dimensional Requirements

MCC 35.3155 (C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Minimum Front Lot Line Length – 50 feet.

Staff: The property line is being adjusted to more than 600 feet from any building on Tract 1. The front lot line meets the 50 foot requirement. This standard is met.

5.2. CFU-4 Dimensional Requirements

5.1. MCC 35.2256: The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions,

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone
Property Line Adjustment	May maintain current nonconforming setback to existing structures	30	30	On tracts with required Primary & Secondary FSZ as part of a land use decision, both shall be maintained.

Staff: The proposed adjusted property line will be relocated approximately 70 feet from the dwelling on Tract 2 and more than 100 feet from the barn exceeding the 30 foot minimum. The dwelling was established on Tract 2 in 1925 according to County Assessment records (Exhibit 2.1) prior to Primary & Secondary Fire Safety Zones requirements. This standard is met.

5.2. LOT SIZE REQUIREMENTS

5.2.1. MCC 33.2263 (A) The minimum lot size for new parcels or lots shall be 80 acres, except as provided in MCC 33.2265, 33.2270, 33.2275, and 33.2280.

Staff: The proposal is for a property line adjustment which does not create a new parcel. Both parcels existed prior to the property line adjustment and both parcel will exist after the adjust with no additional parcel created. The proposal is property line adjustment under MCC 33.2270. This standard is met.

5.2.2. MCC 33.2263 (C) The minimum Front Lot Line Length is 50 feet, except for flag lots as provided in MCC 33.7895(D).

Staff: Tract 2 meets the 50 foot minimum front lot line length.

6. PROPERTY LINE ADJUSTMENT

6.1. RR Property Line Adjustment

MCC 35.3160: Pursuant to the applicable provisions in MCC 35.7790, 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.

Staff: The proposed 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 because there is not enough area to meet the minimum lot sizes for the zone districts. The proposed adjustment will not increase the area of Tract 1 that is in the RR district. Provisions in MCC 35.7790 are addressed in Section 6.3 below. This standard is met.

6.1.1. MCC 35.3160: (1) The following dimensional and access requirements are met:

- (a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements;**
- (b) If the properties abut a street, the required access requirements of MCC 35.3185 are met after the relocation of the common property line; and**

Staff: The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements as addressed in finding is Section 5 of the decision. Tract 1 does not abut a street.

6.1.2. MCC 35.3160 (2) At least one of the following situations occurs:

- (a) The lot or parcel proposed to be reduced in area is larger than 5 acres prior to the adjustment and remains 5 acres or larger in area after the adjustment, or**
- (b) The lot or parcel proposed to be enlarged in area is less than 10 acres in area prior to the adjustment and remains less than 10 acres in area after the adjustment.**

Staff: The proposed PLA meets Subsection (a), the lot or parcel proposed to be reduced in area is larger than 5 acres prior to the adjustment and remains 5 acres or larger in area after the adjustment. This standard is met.

6.2. CFU-4 Property Line Adjustment

MCC 35.2270 (A) Pursuant to the applicable provisions in MCC 35.7790, an adjustment of the common lot line between contiguous Lots of Record based on a finding that:

- (1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;**
- (2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;**
- (3) The new lot line is in compliance with the dimensional requirements of MCC 35.2256; and**
- (4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use; and**
- (5) If the properties abut a street, the required access requirements of MCC 35.2273 are met after the relocation of the common property line.**

Staff: The proposed property line adjustment will not increase the number of dwelling allowed in this district. The resulting lot configuration will be appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment because the

forested area on the southern portion of the existing Tract 2 is better accessed from the south due to topography. The forested area on the northern part of Tract 2 is separated from that on the southern portion of the property by agricultural fields (Exhibit 2.4). The forested areas can continue to be managed separately as they are currently. The new lot line is in compliance with the dimensional requirements of MCC 35.2256, see findings in Section 5.2. Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use. Tract 2 abuts a street and the required access requirements of MCC 35.2273 are met after the relocation of the common property line because there is no change in the front lot line. These standards are met.

6.3. Property Line Adjustment Land Division Code

MCC 35.7790: A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

- (A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**
- (B) 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**
- (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**
- (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

Staff: No additional lot or parcel shall be created from any parcel by the property line adjustment. The applicants own both properties. The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district, see finding above in Sections 6.1 and 6.2. The procedures included as Exhibits 2.5 and 2.6 for finishing a property line adjustment must be followed. This decision will be conditioned that no addition parcel is created and so the procedures for finishing a property line adjustment will be met.

7. CONCLUSION

Considering the findings and other information contained herein, all the Multnomah County Code requirements are met or can be met through Conditions of Approval for the requested Property Line Adjustment.

8. EXHIBITS

Exhibits 1: Submitted by the Applicant

- Exhibit 1.1: Application form submitted 5/23/07 (1 page);
- Exhibit 1.2: Proposed property line adjustment plan map submitted 7/3/07 (1 page);
- Exhibit 1.3: Aerial photo of the adjustment are showing proposed line and land uses (1 page);
- Exhibit 1.4: Bargain and Sale Deed, Book 703, Pages 1282-1283 submitted 5/23/07 (2 pages)
- Exhibit 1.5: Bargain and Sale Deed, Book 615, Pages 1039 submitted 5/23/07 (1 page)

Exhibit 1.6: Certification of On-Site Sewage Disposal completed and signed by Michael Ebeling, Sanitarian, City of Portland with maps attached (3 pages);

Exhibits 2: Supplied by County

- Exhibit 2.1: County Assessment Records and current County Assessment Maps for both properties (6 pages)
- Exhibit 2.2: County Zoning Map (1 page)
- Exhibit 2.3: 1962 County Zoning Map (1 page)
- Exhibit 2.4: 2004 Aerial Photo (1 page)
- Exhibit 2.5 : “Applicant’s Instructions for Finishing a Property Line Adjustment,”
- Exhibit 2.6.: “Surveyor’s Instructions for Finishing a Property Line Adjustment”