



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

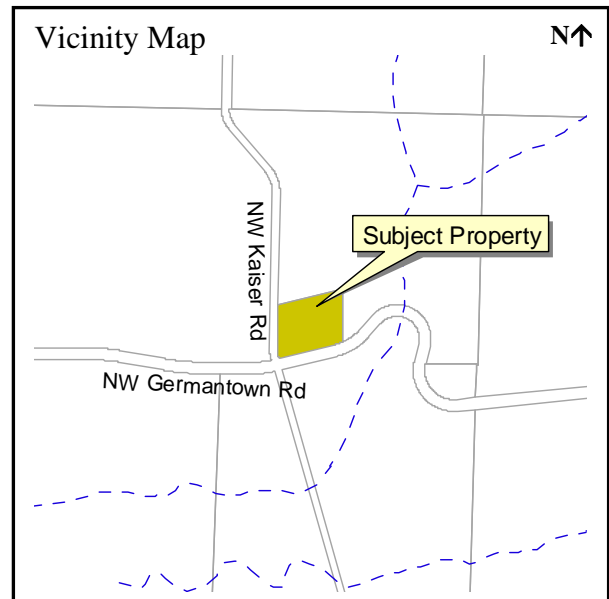
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-07-071

Permit: Lot Of Record Determination

Location: 8048 NW Kaiser Road
TL 200, Sec 2, T1N, R1W, W.M.
Tax Account #R96108-0280

**Owner/
Applicant:** Jennifer Brady



Summary: Lot or Record Determination to determine if the lot was lawfully established as a Lot of Record with development rights.

Decision: Approved.

Unless appealed, this decision is effective Friday, October 5, 2007, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, September 21, 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 Don Kienholz, Staff Planner at 503-988-3043, x2920.

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 Friday, October 5, 2007 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 33.0005 Lot of Record; 33.2675 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>.

Scope of Approval

Approval of this land use decision 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.

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.
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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 was lawfully created and has development rights.

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 July 27, 2007. 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 Jennifer Brady as owner of the subject lot (Exhibit 1). Jennifer Brady has signed the General Application Form authorizing the County to make a Lot of Record Determination (Exhibit 2).

Criterion met.

4. **The Property Is A 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 33.2675 LOT OF RECORD (EFU Zone)

(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same owner-ship 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 Re-cord. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exception to the standards of (A)(2) above:

(a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that re-mains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;**

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(E) Issuance of building permit as verification of a Lot of Record.

(1) The issuance of a building permit de-scribed in this subsection for new development on a lot or parcel is considered verification of compliance with applicable zoning and land division regulations for the creation of a lawful lot or parcel. The lot or parcel described in the building permit is considered a Lot of Record if the building permit was issued prior to July 1, 1986 (date of intergovernmental agreement contracting for building permit services with other jurisdictions) and complies with all of the following:

- (a) There is a copy of the building permit in the Multnomah County or City of Portland permit records and the building permit indicates that the proposed development complied with zoning and land division requirements; and**
- (b) The building permit was for a new principle use, such as a new dwelling, commercial, industrial, community ser-vice, or conditional use; and**
- (c) There is a clear property description on the permit for the property for which the building or placement permit was issued. The description may be con-firmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time.**

(2) A request for verification that a lot or parcel is a Lot of Record under the provisions of this section (E) may be submitted to the Planning Director. A decision by the Planning Director is a ministerial action based upon the evidence described in this section. An appeal of the director's decision for verification of a Lot of Record shall be submitted under the provisions of MCC 37.0740.

Staff: The first deed submitted by the applicant describing the property in its current configuration was recorded in 1991. At that time, the property was zoned Exclusive Farm Use (EFU) with a minimum lot size of 80-acres. The 2-acre property did not meet the minimum lot size, nor did it go through a County approved land division process, as required under the Lot of Record requirements. The applicant believes the property was actually created in 1966/67 with the recording of a series of deeds at that time. Below is a timeline of the formation of the property from 1966 to the present.

Deed	Date	Tax Lot Area Described	Size	Does it Describe the Current Property?
Book 459 Pages 181-182 (Exhibit 3) – Property 1	1-19-1966	West ½ of current Tax Lot 200, except north 30 feet	0.79 acres without including area in ROW	No
Book 570 Page 1773 (Exhibit 4) – Property 2	7-13-1967	East ½ of current Tax Lot 200, except north 30-feet and 20-feet to east	1 acre	No
Book 592 Page 1491 (Exhibit 5) – Property 3	11-21-1967	Only the northern 30-feet of Tax Lot 200 and eastern 20-feet of current Tax Lot 200	.21 acres	No
Book 2476 Pages 945-947 (Exhibit 6) – Consolidation of all three properties	11-12-1991	All of current tax Lot 200	2 acres	Yes

As seen in the table above, the current property was created by consolidating three separate properties, the sum of which is 2-acres. On its face, it appears the subject lot was created in 1991 in violation of zoning and land division rules. The three properties originally created in 1966 and 1967 were zoned F-2, which had a 2-acre minimum lot size. As such, none of the three separate properties met the zoning minimum lot size at their time of creation.

However, the tax card records from the Multnomah County Assessment and Taxation office indicate that the properties were consolidated into one distinct property in 1968 (Exhibit 7) when a portion was added to then Tax Lot 28 (the current Tax Lot 200 and subject property) and left with a balance of 1.98 acres. This was later corrected by the Assessor to 2.0 acres in 1971 (See notes at bottom of tax card, Exhibit 7).

Through the pre-filing and land use application process, the applicant has stated that her belief was that the property owner in 1968 wanted to create a 2-acre property and construct a dwelling on it. The house on the subject property is listed as 1056 square feet in Assessment records (Exhibit 1). A building permit was applied for on July 20, 1965 for the house. However, the permit record (Exhibit 8) shows the house being applied for on a 28-acre property. The larger parent property also has an existing dwelling that was built in 1968. The County also issued a grading and Erosion Control Permit for the property in 2002 (T1-02-003). This means that after the building permit was issued for the subject lot, the property was divided in the sequence listed above in the table. A dwelling was then built on the original parent lot. It appears the intent of the owner at the time (John Linder) was to construct the house on the subject property then divide it off of the larger parent property. The assessor notes support that the tax lot was being added to in order to increase the size of the original property to 2-acres. This, along with the sequencing and timing of the additions, supports the intention of the property owner.

The first division of property was John Linder conveying to himself the .79-acre western portion of the current Tax Lot 200 from a larger parent lot (Book 459 Pages 181-182). With the minimum lot size being 2-acres, the first land division failed to meet the lot size requirement. A year later, the second land division was a 1-acre conveyance (Book 570 Page 1773) from Donald and Annis Cook from the original parent lot to John Linder. The 1-acre property was the eastern portion of the current Tax Lot 200. It appears that Mr. Linder had sold the parent lot to the Cooks, and by all verbal accounts, was subsequently trying to obtain more land for his 0.79-acre property to meet the 2-acre minimum lot size.

the original conveyance (Book 459 Pages 181-182) included right-of-way on Germantown Road and Kaiser Road in its legal description. So while the size of the described area was a total of 1-acre, the actual land owned by Mr. Linder was only .79 acres. As a result, the second land division and conveyance only gave him a total of 1.79-acres, still below the 2-acre minimum lot size. A third and final conveyance from the Cook's to Mr. Linder occurred with Deed Book 592 Page 1491. This land division created a property bordering the north and east lines of the original two properties divided off. The total of all three properties divided off and conveyed to Mr. Linder was 2-acres. This sequence of divisions and conveyances in such a short time period would indicate Mr. Linder was trying to bring his property up to the minimum lot size of the zoning district to make it a legal parcel and Lot of Record. Unfortunately, rather than consolidating the three substandard properties into one, the conveyances left the properties separate and distinct on paper.

However, it is made clear by the County Assessor's tax lot card (Exhibit 7) that the County viewed and treated the land divisions and conveyances as *adding* land to the property created with the original division (Deed Book 459 Pages 181-182) by the notes at the bottom of the card. The notes clearly show the ending balance of the Tax Lot 28 after the conveyances was 1.98-acres which was later corrected to 2.0-acres in 1971. The County obviously did not see the properties as separate. This corroborates the applicant's argument that Mr. Linder was trying to correct the original land division problem and legalize the property.

With the intent to create a 2-acre lot, and the Assessor's clear acceptance of the properties as being consolidated and one distinct property, the Planning Director finds that the deeds creating the separate properties was an unintentional mistake and that the conveyances were intended to add acreage to the original property and remedy the violation of the minimum lot size. As such, the Planning Director finds that the subject property, R961080280 known as tax Lot 200 was created in 1967 and met the F-2 districts minimum lot size. The property had road frontage onto Germantown Road and Kaiser Road. Since there were no partition requirements in place in 1967, it met the land division rules as required under the Lot of Record code requirements. Therefore, the property is a legal Lot of Record.

Criteria Met.

Conclusion

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

Exhibits

1. Multnomah County Assessment And Taxation Information Sheet
2. General Application Form
3. Deed: Book 459 Pages 181-182
4. Deed: Book 570 Page 1773
5. Deed: Book 592 Page 1491
6. Deed: Book 2476 Pages 945-947
7. Assessment and Taxation Tax Lot Card For Subject Property
8. Building Permit Record For House