

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

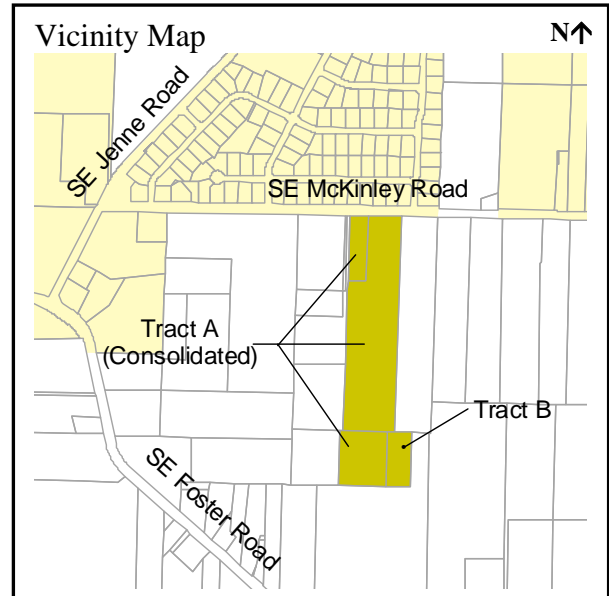
<http://www.co.multnomah.or.us/landuse>

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# NOTICE OF DECISION

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

**Case File:** T2-07-077**Permit:** Property Line Adjustment**Location:** 17036 SE McKinley Road**Tract A:**Tax Lot 100 1S 3E Section 19BA  
(#R993190910)Tax Lot 200 1S 3E Section 19BA  
(#R993191280)Tax Lot 200 1S 3E Section 19BD  
(#R993192110)**Tract B**Tax Lot 100 1S 3E Section 19BD  
(#R993190920)**Applicant/  
Owner:** Michelle (Masters-Smith) Kelly

**Summary:** Consolidate property known as #R99319-1280 with #R99319-0910 and #R993192110 (Tract A) to remedy an unlawful division and then adjust the common property line with property known as #R99319-0920 (Tract B) to increase Tract B's lot area and provide frontage to SE McKinley Road.

**Decision:** Approved With Conditions

Unless appealed, this decision is effective Monday, December 24, 2007, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, December 10, 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 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, x29270.

**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, December 24, 2007 at 4:30 pm.**

**Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 – Code Compliance; 11.15.2218 – Dimensional Requirements; 11.15.2220(E) – Property Line Adjustment; 11.15.2222 – Lot of Record; 11.15.2228 – Access; 11.45.115 – 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; (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 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. **The property owner, or representatives thereof, shall complete the adjustment per the attached “Applicant’s Instructions for Finishing a Property Line Adjustment,” and “Surveyor’s Instructions for Finishing a Property Line Adjustment” included as Exhibit 9. This will include the survey and monumentation of the new lot line by a registered surveyor.**

#### **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 requesting a Property Line Adjustment that would enlarge property known as #R99319-0920 (Tract B) from 1.13-acres to 9.61-acres. The proposal also would consolidate a 1-acre unlawfully created property known as #R993191280 (also known as 17036 SE McKinley Road) into a property described by deed as including both #R993190910 and #R993192110 (Tract A). Tract A would then be reduced from 11.71-acres to 2.91-acres after the adjustment.

2. **Site Characteristics**

**Staff:** The subject properties are located off SE McKinley Road in the Pleasant Valley area of the County. The area is not included in the County's five Rural Area Plan districts and is scheduled at some point to be annexed into the City of Gresham. It is within the Urban Growth Boundary and is administered through the County's 11.15 code. Two separate drainages pass through the existing Tract A east to west. Tract A currently contains two single family dwellings and a barn. Tract B is currently vacant. After the adjustment, Tract A will contain one dwelling and the barn and Tract B will contain a dwelling. In addition to the subject properties, the entire area south of McKinley Road is zoned Rural Residential while the properties north of the road are within the City of Portland. Most of the surrounding properties contain single-family dwellings.

3. **Public Comment**

**MCC 37.0530 Summary Of Decision Making Processes.**

**(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 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:** An Opportunity to Comment was mailed on November 9, 2007 to property owners within 750-feet of the property lines. No written comments were received regarding the application but a few phone messages were received from neighbors seeking clarification on the project.

*Procedures met.*

4. **Code Compliance**

**MCC 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.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

**(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**

**(2) It is necessary to protect public safety; or**

**(3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or in-install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** There is an active compliance case involving the subject property. The compliance case revolves around three issues. The first is associated with the 1-acre property known as #R99319-1280 and under the address 17036 SE McKinley Road. The property was unlawfully created on January 12, 2001 (Exhibit 1) when it was excepted out of the larger property zoned Rural Residential with a 5-acre minimum lot size.

The second compliance issue was that the property known as #R993191280 contained two dwellings. On September 30, 1975, the owner at the time approached Multnomah County for a replacement dwelling permit (Permit #751729 and Exhibit 2). As part of the approval, the original dwelling was required to be relocated south of the building site, decommissioned and used as only storage space. The dwelling was never decommissioned and was turned into a rental unit. This was a violation of a condition of approval as well as a violation of the one dwelling per Lot of Record requirement.

Upon learning of the second dwelling issue, the current owner and applicant worked with County staff to remedy the violation. The remedy included relocating the dwelling that was required to be decommissioned and converted into a storage structure from the current Tract A onto the proposed Tract B. In preparing for the move, grading work was done without the required Grading and Erosion Control permit, causing a third compliance issue on the property. A Grading and Erosion

Control permit was submitted on November 29, 2007 (T1-07-055) which will resolve the grading issues.

The owner and applicant again worked with County staff and signed a Voluntary Compliance Agreement on November 1, 2007 agreeing to certain steps to remedy all compliance issues on the property. That agreement (Exhibit 3) alone with approval of this Property Line Adjustment would remedy all code compliance issues and bring the property into full compliance – thus satisfying this code criterion as well as the Lot of Record requirements.

*Criterion met.*

5. **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. 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 Michelle Masters-Smith (Kelly) as the owner of the subject property (Exhibit 4). Ms. Masters-Smith (Kelly) has signed the Property Line Adjustment Application Form (Exhibit 5) as the owner of all the properties, authorizing the processing of the permit.

*Criterion met.*

6. **Rural Residential Dimensional Standards**

**MCC 11.15.2218 Dimensional Requirements**

**A. (A) Except as provided in MCC .2220, .2222, .2224 and .7720, the minimum lot size shall be five acres.**

**Staff:** No new lots are being created as a result of this decision.

*Criterion met.*

**B. (B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.**

**Staff:** Tract A includes the right-of-way in its calculation while Tract B does not. Tract B does not have the required 50-feet of road frontage for it to be included in the calculation. Regardless, because no new lots are proposed as part of the application, the minimum lot size does not need to be met and area of the lots is not relevant.

*Criterion met.*

**C. (C) Minimum Yard Dimensions - Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height - 35 feet.**

**Minimum Front Lot Line Length - 50 feet.**

**Staff:** As shown on the submitted site plan (Exhibit 6), all structures meet the proposed new property line. Tract A meets the minimum front lot line length while Tract B is a flag lot and meets the width requirements of a flag pole under MCC 11.45.470 the Land Division Code.

*Criterion met.*

- D. (D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional requirements not otherwise established by Ordinance.**

**Staff:** No new buildings are proposed within 100-feet of the front lot line which would not require an increase in the front yard setback.

*Criterion met.*

## **7. Rural Residential Property Line Adjustment Approval Criteria**

### **MCC 11.15.2220 Lots of Exception and Property Line Adjustments**

**(E) Pursuant to the applicable provisions in the Multnomah County Land Division Ordinance, the Planning Director may grant a property line adjustment between two contiguous lots or parcels 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.**

- A. (1) No additional lot or parcel is created; and**

**Staff:** Three properties are included in the application. Tract A combines two properties that were unlawfully divided in 2001 back into its last lawful configuration. Tract B has been and continues to be a legal Lot of Record. With the consolidation of the two unlawful properties into one lawful property, no new parcels are created.

*Criterion met.*

- B. (2) 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:** Tract B will be enlarged from 1.13-acres to 9.61-acres. This satisfies the requirements of MCC 11.15.2220(E)(2) above.

*Criteria met.*

8. **Lot of Record**

**MCC 11.15.2222 Lot of Record**

**(A) For the purposes of this district, a Lot of Record is a parcel of land:**

**1. For which a deed or other instrument dividing land was recorded with the Department of Administrative Services, or was in recordable form prior to October 6, 1977; and**

**2. Which, when established, satisfied all applicable laws.**

**(B) A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

**(C) Separate Lots of Record shall be deemed created when a street or zoning district boundary intersects a parcel of land.**

**(D) Except as otherwise provided by MCC .2220, .2224, and .7720, 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.**

**Staff:** Currently, Tract A is not a Lot of Record under this definition since the two properties comprising the tract were created by deed in 2001 (Exhibit 1). At that time they did not satisfy the land division laws in place at the time or the zoning code. However, by consolidating both back into the configuration of the property as described in the 2000 deed (Exhibit 7), the property would be placed into its last legal configuration - the same as labeled Tract A on the site plan. A chain of deeds shows the property appeared in the same legal description as in the 2000 deed since December of 1974 (Deed Book 1023, Page 1915 through 1917, Exhibit 8). The configuration in 1974 was the result of a consolidation of two properties described separately in 1962 when the property was zoned Suburban Residential. Both of those properties met the zoning and land division requirements when created in 1962.

Tract B has been in the same configuration since 1946 when it was described in Deed Book 1091, Page 145-146. Multnomah County did not have any partition rules or zoning rules in place at the time it was created. Tract B is a Lot of Record. Although Tract A currently is not a Lot of Record as a result of this property line adjustment, it will become a Lot of Record.

*As Conditioned, These Criteria met.*

9. **Access**

**MCC 11.15.2228 Access**

**Any lot in this district shall abut a street, or shall have other access determined by the Hearings Officer to be safe and convenient for pedestrians and passenger and emergency vehicles.**

**Staff:** After the adjustment, both Tracts will have direct access to SE McKinley Road, satisfying this requirement.

*Criterion met.*

10. **Land Division Requirements**

**MCC 11.45.115 Property Line Adjustment (Lot Line Adjustment)**

**A property line adjustment is the relocation of a common property line between two abutting properties.**

- A. (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. [Amended 1999, Ord. 932 § IV]**

**Staff:** The property is in the Rural Area south of the Cities of Gresham and Portland. No additional lots or parcels are being created as a result of the adjusted line. One of the resulting parcels will be below the 5-acre minimum Rural Residential minimum lot size requirement.

*Criterion met.*

- B. (C) **Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:**

- (1) (1) **No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

**Staff:** No additional lots or parcels are being created as a result of the adjustment.

*Criterion met.*

- (2) (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**



**Staff:** Michelle Masters-Smith (Kelly) is the owner of the properties involved with the adjustment and has signed the Property Line Adjustment application form (Exhibit 5) for an action to be taken. The conveyances shall be reviewed by the County prior to their being recorded.

*Criterion met.*

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

**Staff:** Compliance with the dimensional requirements of the Rural Residential zone are found under Finding #6.

*Criterion met.*

- (4) **(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 Ordinance as determined by the County Engineer.**

**Staff:** The right-of-way for SE McKinley Road is owned by the City of Portland and not under the jurisdiction of Multnomah County.

*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 code have been met.

### **Exhibits**

1. January 12, 2001 Deed
2. Building Permit #751729
3. Voluntary Compliance Agreement
4. Multnomah County Assessment and Taxation Information Sheet
5. Property Line Adjustment Application Form
6. Site Plan
7. 2000 Deed
8. Deed Book 1023, Page 1915 through 1917
9. Instructions On How To Finish A Property Line Adjustment