

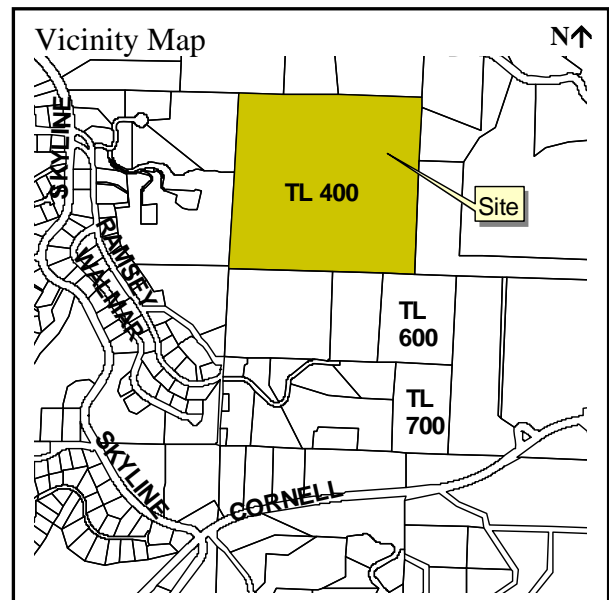


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-07-108
Permit: Lot of Record Determination
Location: North of 7025 NW Summitview Drive
TL 400, Sec 25D, T 1N, R 1W, W.M.
Tax Account #R96125-0090
Applicant: Peter Finley Fry
Owner: Denis & Lucille McAleese
Base Zone: Commercial Forest Use – 2 (CFU-2)
Overlays: Significant Environmental Concern for
wildlife habitat, streams & Hillside
Development



Summary: The applicant is requesting a determination that the subject 39.07 acre parcel is a separate Lot of Record from Tax Lots 600 & 700, 1N1W25D which is presently held in the same ownership in the Commercial Forest Use – 2 zone.

Determination: Tax Lot 400, 1N1W25D is a separate Lot of Record pursuant to MCC 33.2275.

Unless appealed, this decision is effective Friday, February 22, 2008, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, February 8, 2008

Opportunity to Review the Record: A copy of the Planning Director's 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 Lisa Estrin, Staff Planner at 503-988-3043, ext. 22597.

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, February 22, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.0005 Definitions, Lot of Record, MCC 33.2275 CFU-2 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 of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Applicant: I am submitting the application of behalf of the property owners, Denis G. (Gerald) McAleese and Lucille McAleese. The tax lots are located at 7025 NW Summitview Drive. The following table shows the general information for each of these three tax lots.

State Identification/Tax Lot ID	Alternate Account No.	Site Size
1N1W25D-00600	R961250100	7.85 acres
1N1W25D-00700	R961250110	6.01 acres
1N1W25D-00400	R961250090	39.07 acres

Each of these tax lots were created in their current configuration many years before the adoption of subdivision or zoning ordinances that would have applied. Tax Lot 600 was created through separate conveyance by deed recorded July 21, 1927 at Book 1107, page 80 of the Multnomah County records. Tax Lot 700 was created by deed conveying it separately on December 18, 1909 and recorded by Book 480, page 217. A correction deed was recorded in 1911 at Book 532, page 338. These two deeds taken together establish Tax Lot 700 as a separate parcel. Finally, Tax Lot 400 was created by separate conveyance under a deed dated February 11, 1924, and recorded at Book 952, page 207.

Based on these deeds, Tax Lots 600, 700 and 400 were created at a time when there was no zoning for these properties and when the land division rules allowed creation of separate lots through recording deed conveyances. Tax Lots 600, 700 and 400 satisfied all applicable zoning laws and all applicable land division laws at the time of their creation in compliance with the lot of record definition standards in MCC 33.0005.

Because of current resource zoning of these three tax lots, these tax lots must also satisfy the standards of MCC 33.2675. These three tax lots are currently held in common ownership and are contiguous to each other. The current owners acquired these three tax lots by deed that was recorded October 5, 2005 at Auditors Fee No. 2005-191737. Tax Lots 600 and 700 are each smaller than 19 acres.

However, under MCC 33.2675(A)(1), the lot consolidation rules of MCC 33.2675(A)(2) do not apply if the lots were not contiguous to any other parcel or lot under the same ownership on February 20, 1990. On that date, Tax Lot 600 was owned by Jeffrey Fish, but Mr. Fish did not own either of the other two tax lots. Since Tax Lot 600 was held in separate ownership from 1989 through 1992, there was no contiguous common ownership on February 20, 1990. This is because Tax Lot 600 lies between Tax Lots 400 and 700, so during this time there could be no contiguous common ownership of these three tax lots.

Mr. Fish acquired Tax Lot 600 under at warranty deed initially recorded September 21, 1989 at Book 2239, page 286. Mr. Fish conveyed Tax Lot 600 to Donald Pollock under a warranty deeded recorded April 20, 1992 at Book 2532, page 444. At this time, Donald Pollock also owned Tax Lots 400 and 700, and he conveyed all three to Thomas P. Riley and Julie Ann Pinette by warranty deed recorded at Book 2529, page 1513. The current owners acquired all three tax lots from Mr. Riley and Ms. Pinette.

Attached to this letter are copies of all deeds referenced above. Since these deeds show that Tax Lots 600, 700 and 400 satisfied all applicable zoning laws and all applicable land division laws at the

time of their creation, each of these three tax lots comply with the lot of record definition standards in MCC 33.0005. Further, since these deeds establish that none of these tax lots were held in contiguous common ownership on February 20, 1990, the lot consolidation rules of MCC 33.2675(A)(2) do not apply.

Since the above criteria have been satisfied, this application for a lot determination requires that Tax Lots 400, 600 and 700 are each legal lots of record should be approved.

1.00 ***Administration and Procedures***

1.01 **Type II Case Procedures**

MCC 37.0530(B): ...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...

Staff: The application was submitted November 16, 2007 and was deemed complete as of December 20, 2007. An "Opportunity to Comment" notice was mailed on December 24, 2007 to all properties within 750 feet of the subject property in compliance with MCC 37.0530. Written comments were received from a number of neighbors (Exhibit B.2 through B.6) concerned with impacts that may be generated by additional development within the Balch Creek area and on the various tax lots included in the T2-07-106, T2-07-107 & T2-07-108 decisions.

At present, the applicant has not requested any additional development be permitted as part of this Lot of Record Determination, T2-07-108. Any proposed development in the future will require a land use permit and notice will be given to the surrounding property owners for their comments.

1.02 **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: The proposed determination is for Tax Lot 400, 1N1W25D which is north of 7025 NW Summitview Drive. Assessment & Taxation records show that the land is owned by Denis & Lucille McAleese. Peter Finley Fry, PhD has been designated the applicant in this case by the McAleeses (Exhibit A.1). Both McAleese have signed the General Application Form (Exhibit A.1). *This criterion has been met.*

1.03 **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 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 are no known violations on the property at this time.

2.00 *Lot of Record Findings*

2.01 **MCC 33.2275 Lot of Record.**

(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 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. 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) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) 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, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;
- (7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);
- (8) 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 33.2273, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed 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) A Mortgage Lot.
- (4) An area of land created by court decree.

MCC 33.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

Lot of Record – 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 33.7785. 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: As shown in the applicant’s deed exhibits A.4 through A.11 and in the table below, Tax Lot 400, 1N1W 25D was originally created in its current 39.07 acre configuration in February 1924 (Exhibit A.7). Multnomah County did not regulate the creation of parcels until the late 1950’s. The parcel, known as Tax Lot 400 was lawfully established.

Tax Lot 400 is contiguous to Tax Lot 600, 1N1W25D. Tax Lot 600 is contiguous to Tax Lot 700, 1N1W25D. All three tax lots are currently owned by the McAleeses. Tax Lot 400 is 39.07 acres in size, Tax Lot 600 is 7.85 acres, and Tax Lot 700 is 6.01 acres. Since Tax Lots 600 & 700 are both under 19 acres in size, their ownership on February 20, 1990 is important for the aggregation requirement of MCC 33.2275(A)(2) above. Tax Lots 600 and 700 would aggregate as a single lot of record with Tax Lot 400 if the same owner held them all on February 20, 1990. The applicant has submitted evidence that Tax Lot 600 was in a different ownership as of February 20, 1990 (Exhibit A.8). County tax records for 1989 and 1990 verify this evidence.

Name	Instrument	Book & Page	Describes	Date
McCoy to Harvey Jr.	Deed	1107, 80 - 81	TL 600	July 1927
Clampet to Harvey	Deed	480, 217 - 218	TL 700	12/31/1909
Clampet to Harvey	Q.C. Deed	532, 338	TL 700	2/27/1911
Society to Cannon	Deed	952, 207 - 208	TL 400	2/8/1924
Polluck to Fish	Warr. Deed	2502, 2425 - 2426	TL 600	9/13/1987
Fish to Polluck	Warr. Deed	2532, 444	TL 600	4/1/1992

			Pcl 3: TL 700+600–600 = 700	
Riley to McAleese	Stat. Warr. Deed	2005-191737	Parcel 1: TL 400 Parcel 2: TL 600 Parcel 3: TL 600 + TL 700	10/3/2005

The last issue that staff believes needs to be addressed as part of this determination is the approval for the existing dwelling on Tax Lot 600. The existing dwelling was constructed in 1992 through the issuance of a building permit as a Primary Use in the MUF-19 zone. The MUF-19 zone specified as an *Primary Use* “11.15.2168...(E) Residential use consisting of a single-family dwelling including a mobile or modular home, on a lot of 38 acres or more, [staff emphasis added] *subject to the residential use development standards of MCC .2194.*” At the time, single family dwellings were not an outright permitted use on lots smaller than 38 acres.

In 1992, Tax Lot 600, 700 & 400 were owned by a single family and was considered to be a single Lot of Record pursuant to MCC 11.15.2182(A)(3). The Grading and Erosion Control permit, HDP 32-92 referenced the site size as approximately 54 acres and highlighted the three tax lots as the development site. At the time, the definition of *Lot* was “A *plot, parcel or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership.*” [Staff emphasis added.] Even though in 1992 the three tax lots were considered a single lot of record and a dwelling was permitted as a *Primary Use* in the zone, the land use decision authorizing the building permit does not disrupt the existence of or require the permanent aggregation of the three parcels into a single lot. ORS 92.017 provides “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.*”

From at least 1992 until 2006, the subject properties were a single Lot of Record pursuant to Multnomah County Code. In 2006, the County amended its CFU zones Lot of Record provisions and chose a single date in which ownership would be used to aggregate legally established parcels for the Lot of Record provisions. With that change, Tax Lot 400, 1N1W25D became a separate Lot of Record from Tax Lot 600 and 700, 1N1W25D pursuant to the facts related in this decision.

3.00 **Conclusion**

Based on the findings and other information provided above, the 39.07 acre parcel known as Tax Lot 400, 1N1W25D is a separate Lot of Record in the CFU-2 zone.

4.00 **Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	11/16/07
A.2	2	Narrative	11/16/07
A.3	1	Chicago Title Insurance Company Map 1N1W25D with 3 Parcels Labeled	11/16/07

A.4	3	Deed Recorded in Book 1107, Page 80 - 81	11/16/07
A.5	2	Deed Recorded in Book 480, Page 217 - 218	11/16/07
A.6	1	Deed Recorded in Book 532, Page 338	11/16/07
A.7	2	Deed Recorded in Book 952, Page 207 - 208	11/16/07
A.8	2	Warranty Deed Recorded in Book 2502, Page 2425 – 2426	11/16/07
A.9	2	Warranty Deed Recorded in Book 2529, Page 1513 - 1514	11/16/07
A.10	1	Warranty Deed Recorded in Book 2532, Page 444	11/16/07
A.11	2	Statutory Warranty Deed Recorded 2005-191737	11/16/07
‘B’	#	Staff Exhibits	Date of Document
B.1	2	A&T Property Records for Tax Lots 700, 1N1W25D	11/21/07
B.2	2	Comments from Denis Wheary	1/8/08
B.3	1	Comments from Lou Ann Schreiber	1/2/08
B.4	2	Comments from Edward & Beth Woods	1/7/08
B.5	2	Comments from Alena Wheary	1/4/08
B.6	1	Comments from Elaine Rybak	1/4/08
‘C’		Administration & Procedures	Date
C.1	1	Complete Letter – Day 1 (Dec. 20, 2007)	1/18/08
C.2	1	Opportunity to Comment	12/24/07
C.3	9	Administrative Decision	2/8/08