



**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:** T2-08-009

**Permit:** Lots of Exception

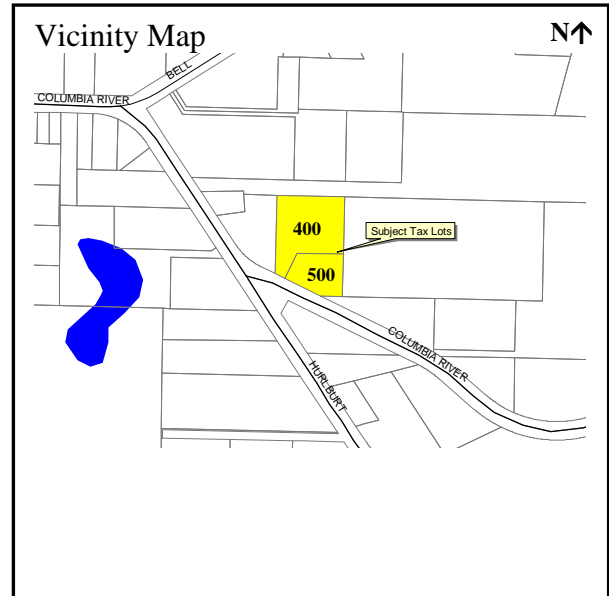
**Location:** Tax Lot 400: 32625 East Historic  
Columbia River Highway  
1S4E04BB 00400  
(R994040770)

Tax Lot 500: 32605 East Historic  
Columbia River Highway  
1S4E04BB 00500  
(R994041030)

**Owners:** Charles & Kathleen O'Neil

**Applicant:** Charles O'Neil

**Base Zone:** Rural Center (RC)



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**Summary:** Application to qualify for Land Division Review for the creation of two separate parcels through the Lots of Exception process provided for by the Multnomah County Code (MCC) for property described as Tax Lots 400 and 500 of Map T1S, R4E, Sec., 04BB.

**Decision:** Approved with Conditions.

Unless appealed, this decision is effective Tuesday, June 17, 2008, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Kevin C. Cook, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, June 3, 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 Kevin Cook, Staff Planner at 503-988-3043 ext. 26782.

**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 Tuesday, June 17, 2008, at 4:30 PM.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 35.3360(A)(1) through (4) [Lots of Exception]; MCC 35.3355(C) through (E) [Dimensional Standards in the Rural Center (RC) zone district]; Chapter 37 [Administration and Procedures].

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 (2) 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 subject property meets the criteria for an exception to the minimum lot size standards set forth in the Rural Center (RC) zoning district by way of the Lots of Exception criteria in MCC 35.3360. Any action based upon said qualification must occur within two years of the final approval of this application (MCC 37.0700(A)(2)). No plat or deeds for the proposed parcels shall be recorded until the property owner applies for, and receives final approval for, a Land Division (MCC 35.7775(G)).

2. Each new parcel that will be created by the partition shall have at least one of the habitable dwellings; and the partition shall not create any vacant parcels on which a new dwelling could be established (MCC 35.3360(A)(3) and (4)).
3. Each new parcel that will be created by the partition shall comply with the dimensional standards set forth in MCC 35.3355(C) through (E).

**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*.

### ***Proposal:***

Tax lots 400 and 500 comprise one discrete deeded parcel and currently may not be separately conveyed apart from one another. Tax lots are created by the Multnomah County Assessment and Taxation Department (A&T) for the purposes assessing land and related improvements for taxation purposes.

The property comprised of the two tax lots features a single family dwelling and a multi-family (4-plex) unit. It is likely that A&T created the tax lots in order to differentiate between dissimilar uses on the property. Tax lot 400 is 1.08 acres and contains the single family dwelling, a shed, and a detached garage. Tax lot 500 is 0.48 acres and contains the two story (4-plex) multi-family dwelling and associated parking area.

The property is zoned Rural Commercial (RC). Newly created RC zoned properties are generally limited to 2 acres or larger (MCC 35.3355(A)). The purpose of this application is to determine whether the subject property could qualify for a future Land Division Review resulting in two separately conveyable, undersized parcels via the Lots of Exception approval criteria listed in MCC 35.3360.

This application confirms that the subject property does qualify for a two-lot partition consisting of parcels of less than minimum allowed in the underlying zone district; however, **this application does not grant approval of a final plat or new deeds that would create new parcels.** Per MCC 35.7775(G), the property owner is required to submit an application for a Land Division to determine whether the proposal further meets the qualifications for recordation of a partition plat and associated property deeds (Condition #1).

The property owner has requested the current review with the idea that if the property meets the Lots of Exception criteria, he could then apply for a Land Division. The property owner has indicated that the proposed parcels in a partition application would probably be similar in configuration as the existing tax lots that comprise the subject parcel (Exhibit A.4).

### 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 February 8, 2008 (Exhibit A.1) and was deemed complete on April 1, 2008 (Exhibit C.3). An “Opportunity to Comment” notice (Exhibit A.4) was mailed on April 21, 2008 to all property owners within 750 feet of the subject property in compliance with MCC 37.0530. The following comments were received:

**Email letter received from Ronald J Rice on May 4, 2008 (Exhibit D.1):**

*“Without knowing exactly what the intent of the property use is to be, then we CANNOT approve the request of this application. Thank you for the notice.”*

**Staff:** The purpose of the application is explained in detail above under the section titled Proposal. The applicable criteria for Lots of Exception do not evaluate the future uses of property or the intent of the property owner. All property owners within 750 feet of the subject property will have an opportunity to review the specific Land Division configuration proposed once the owners submit this application. The creation of the two parcels can not occur without the Land Division Review.

**Email letter received from Dwayne & Jamie Schell on May 5, 2008 (Exhibit D.2):**

“This is a written follow-up to the conversation we had on Friday, May 2, 2008 in regards to the land use application for 32525 E Historic Columbia River Hwy (File T2-08-009).

The property line in question is the East line of our property our property (32625 E Historic Columbia River Hwy). All parties have assumed that the property line followed the fence line which extends about 20 meters east at the north east end and then south and ends at approximately where the surveyed property line ends (this makes it a pie shape addition to our property). After I was made [aware] of the survey results, I contacted an attorney who advised me that the land is mine by adverse possession.

I am more than happy to provide you with more information if necessary. You can contact us via email or phone.”

**Staff:** The current application is based upon the existing legal descriptions as indicated on the current deed for the property (Exhibit A.12). Claims of adverse possession are generally considered to be a civil matter between private parties and as such are not evaluated as part of this type of land use review.

**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:** Assessment & Taxation records show that the property is currently owned by Charles and Kathleen O’Neil. Charles O’Neil has 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 land-use violations on the property.

## 2.00 *Lots of Exception*

### 2.01 MCC 35.3360(A) Lots of Exception

An exception to permit creation of a parcel of less than one acre, out of a Lot of Record, may be authorized when in compliance with the dimensional requirements of MCC 35.3355(C) through (E). Any exception shall be based on the following findings...

**Staff:** The subject parcel is a Lot of Record as indicated in the finding under section 4.00 of this decision. The tentatively proposed undersized parcels can meet the dimensional requirements of MCC 35.3355(C) through (E) as indicated in findings under sections 3.01 through 3.03 of this decision.

### 2.02 ... (1) The Lot of Record to be divided has two or more permanent *habitable dwellings*;

**Staff:** MCC 35.0005 defines habitable dwelling as,

“An existing dwelling that:

(a) Has intact exterior walls and roof structure;

(b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(c) Has interior wiring for interior lights;

(d) Has a heating system; and

(e) Was lawfully established.”

**Staff:**

**Tax Lot 500:** The property owner has submitted photographic evidence (Exhibit A.5) that the multi-family (4-plex) has all of the elements listed in (a) through (d) above. The City of Portland Sanitation office indicates that the multi-family unit is utilizing an approved sanitary waste disposal system (Exhibit A.7). According to County Assessment and Taxation Records, the multi-family dwelling was established in 1942, a year that predates modern building and zoning regulations; therefore, the multi-family dwelling was lawfully established. *The multi-family (4-plex) is a habitable dwelling.*

**Tax Lot 400:** The property owner has submitted photographic evidence (Exhibit A.6) that the

single-family manufactured dwelling has all of the elements listed in (a) through (d) above. The City of Portland Sanitation office indicates that the single-family dwelling is utilizing an approved sanitary waste disposal system (ExhibitA.8). According to building permit records (Exhibit B.4) the single-family dwelling received zoning approval to be placed on the parcel on July 12, 1994; therefore, the multi-family dwelling was lawfully established. *The single-family manufactured dwelling is a habitable dwelling.*

- 2.03        **(2) The permanent *habitable dwellings* were lawfully established on the Lot of Record before October 4, 2000;**

**Staff:** As indicated in the findings in Section 2.02 above, *both permanent habitable dwellings were established prior to October 4, 2000.* The multi-family dwelling was established in 1942 (Exhibit B.2) and the single-family dwelling was established in 1994 (Exhibit B.1).

- 2.04        **(3) Each new parcel created by the partition will have at least one of the *habitable dwellings*;**

**Staff:** The tentatively proposed partition plat (Exhibit A.4) indicates that each new parcel will contain at least one dwelling each. Condition 2 requires the final partition plat to demonstrate compliance with the above criterion. *As conditioned, the criterion is met.*

- 2.05        **(4) The partition will not create any vacant parcels on which a new dwelling could be established.**

**Staff:** The tentatively proposed partition plat does not include any vacant parcels. Condition 2 requires the final partition plat to demonstrate compliance with the above criterion. *As conditioned, the criterion is met.*

- 3.00        ***Rural Center Criteria (MCC 35.3355(C) through (E))***

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

Front	Side	Street Side	Rear
30	10	30	30

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

**Staff:** The applicant has submitted a recent survey (ExhibitA.4) that indicates the locations of structures in relation to existing, and proposed property lines. Both dwellings on the property do not appear to meet existing yard setback requirements in relation to existing property lines; however, the tentatively proposed property line would be in compliance with existing yard dimension requirements. The current proposal is for an approval to create 2 new lots using the Lots of Exception criteria. The applicant's tentatively proposed property line (ExhibitA.4) shows that the creation of a new property line dividing the current property can comply with yard setback requirements. Condition 3 of this decision requires any new property line to comply with current dimensional standards. The tentatively proposed property line indicates that parcel 1 to the north would have less than a 50 foot front line width. However, it is possible to create either a flag-lot, in which case the 50 lot line width would not apply, or change the configuration of the tentatively proposed property line in order to make it comply with the standard, which is possible without conflicting with setback standards. Condition 3 requires the creation of a lot that will comply with the 50 foot minimum front line width. *With the appropriate conditions, this criterion has been met.*

- 3.02        **(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 county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** The subject parcel has frontage along the East Historic Columbia River Highway, which is a State facility. The Oregon Department of Transportation will need to determine whether any additional right-of-way is needed as part of any proposed partition.

- 3.03        **(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** According to the applicant, there are no structures on the property that exceed the 35-foot height limitation. *The criterion has been met.*

4.00    **MCC 35.3370 Lot of Record**

**(A) In addition to the *Lot of Record* definition standards in MCC 35.0005, 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 and R zones 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, RC zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change to RC for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004 applied a minimum 2 acre lot size to RC zoned areas outside “acknowledged unincorporated communities” except where properties are within one mile of the Urban Growth Boundary the minimum is 20 acres;**
- (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 35.3385, 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 35.3360, 35.3375, and 35.4300 through 35.4360, 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.

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

(1) The issuance of a building permit described 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 service, 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 confirmed 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 subject parcel was created in its current configuration on November 13, 1962 when Tax Lot 700 to the east was divided off the parent parcel thereby creating a three-lot partition that included the subject parcel. The deed that created tax lot 700 is recorded in the Official Multnomah Records as Instrument Number 47517 of Book 2143, Page 203 (Exhibit A.12).

The subject parcel was zoned R-10 at the time of the partition (Exhibits B.4 and B.5) and met the dimensional standards of the zone. *The subject parcel is a Lot of Record.*

## 5.00 **Conclusion**

Based on the findings and other information provided above, the subject property meets the criteria for an exception to the minimum lot size standards set forth in the Rural Center (RC) zoning district by way of the Lots of Exception criteria set forth in MCC 35.3360. This approval is subject to the conditions of approval established in this report.

6.00 ***Exhibits***

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits
- ‘D’ Comments Received

<b>Exhibit #</b>	<b># of Pages</b>	<b>Description of Exhibit</b>	<b>Date Received/ Submitted</b>
<b>‘A’</b>		<b>Applicant’s Exhibits</b>	<b>Date of Document</b>
A.1	1	General Application Form	02/08/08
A.2	1	Tentative Legal Description for Parcel 1	03/04/08
A.3	2	Tentative Legal Description for Parcel 1	03/04/08
A.4	6	Tentatively Proposed Partition Plat	03/19/08
A.5	1	Photographs of Multi-Family (4-Plex) Unit	02/13/08
A.6	2	Photographs of Single-Family Manufactured Home	02/13/08
A.7	5	Certificate of On-Site Sewage Disposal (4-Plex)	04/02/08
A.8	5	Certificate of On-Site Sewage Disposal (Single-Family Dwelling)	04/02/08
A.9	1	Certificate of Water Service (4-Plex)	03/19/08
A.10	1	Certificate of Water Service (Single Family Dwelling)	03/19/08
A.11	6	Pre-Application Meeting Notes	02/08/08
A.12	41	Deed History	02/08/08
<b>‘B’</b>		<b>Staff Exhibits</b>	<b>Date of Document</b>
B.1	3	Assessment and Taxation Property information (Tax Lot 400)	03/07/08
B.2	3	Assessment and Taxation Property information (Tax Lot 500)	03/07/08
B.3	57	Pre-Application Submittal Documents	02/08/08
B.4	10	Historical Zoning Excerpts from 1960 Zoning Ordinance	02/08/08
B.5	1	1960 Zoning Map	02/08/08
<b>‘C’</b>	<b># of</b>	<b>Procedural Exhibits</b>	<b>Date Received/</b>

	<b>Pages</b>		<b>Submitted</b>
C.1	1	Letter Indication Incomplete Application	03/07/08
C.2	1	Applicant 'Acknowledgement' Letter	03/07/08
C.3	1	Letter Indicating Complete Application	04/17/08
C.3	1	Opportunity to Comment Notice	04/21/08
<b>'D'</b>	<b># of Pages</b>	<b>Comments Received</b>	<b>Date Received/ Submitted</b>
D.1	1	Email Letter from Ronald J. Rice	05/04/08
D.2	1	Email Letter from Dwayne & Jamie Schell	05/05/08