



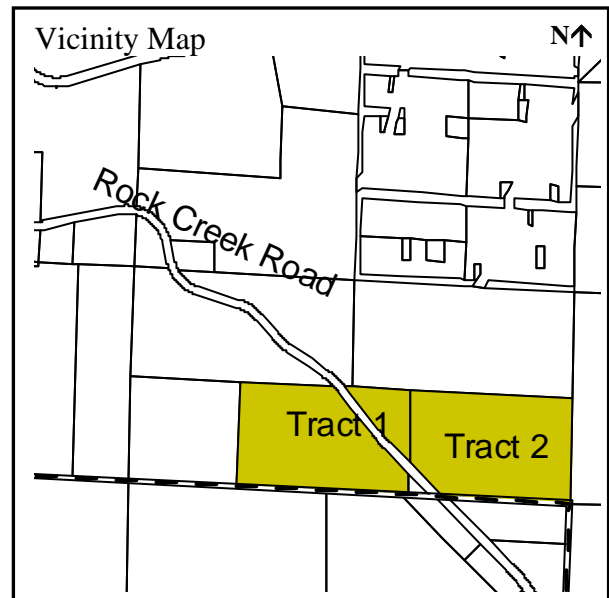
MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2010-844
Permit: Property Line Adjustment
Location: 13611 NW Rock Creek Road
Tax Lots 500, 400 & 200, Section 26D,
Township 2N, Range 2W, W.M.
Tax Accounts #R972260320,
R972260310 & R972260380

Applicant: Azimuth Surveying
Owner: Martin and Kara Laetsch &
Vanport Manufacturing Inc.
Base Zone: Commercial Forest Use-2 (CFU-2)
Overlays: Significant Environmental Concern for
Wildlife Habitat (SEC-h) and Streams
(SEC-s); Slope Hazard (HD)



Summary: A Property Line Adjustment between the two parcels to correct a building's encroachment over the common property line.

Decision: Approved With Conditions

Unless appealed, this decision is effective Thursday, November 11, 2010, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Thursday, October 28, 2010

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, ext. 29270.

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 Thursday, November 11, 2010 at 4:30 pm.**

NOTICE OF APPEAL HEARING

If an appeal of this decision is filed, a public hearing will be held on Friday December 3, 2010. The hearing will begin at 10:30 AM or soon thereafter.

The hearing will take place in Room 103 at the Land Use Planning and Transportation Program office located at 1600 SE 190th Avenue, Portland, OR 97233. If no appeal is filed, a notice canceling this hearing will be posted on the outside of the Yeon Annex Building doors. You can also call the receptionist at 503-988-5050 option '0' to inquire on the status of the hearing after November 11, 2010.

The Hearing shall be regarding a property line adjustment between the two subject parcels to correct a building's encroachment over the common property line. Applicable approval criteria are listed below this notice. Any interested party may testify at the hearing or submit written comments on the proposal prior to the hearing. This staff report serves as the staff report available at the hearing pursuant to MCC 37.0620(D).

Any issue that is intended to provide a basis for an appeal to the Land Use Board of Appeals (LUBA) must be raised prior the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties an opportunity to respond to the issue.

A public hearing to consider any appeal will be conducted before one of the following County Hearings Officer's:

Joan Chambers
Liz Fancher

Applicable Approval Criteria: Multnomah County Code (MCC): 33.0005 Lot of Record; 33.2256 Forest Practice Setbacks and Fire Safety Zones; 33.2270 Property Line Adjustments; 33.2275 Lot of Record; 33.7790 Property Line Adjustment.

Copies of the referenced Multnomah County Code (MCC) 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. **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 [MCC 37.0580].**
2. **No additional lot or parcel shall be created through this process. [MCC 33.7790(A)].**
3. **The applicant shall complete the procedures required on forms provided by the Planning Director [Exhibit 2]. [MCC 33.7790(D)].**
4. **Prior to recording the deeds, the property owner, or representative there of, 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) 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 Records Management office at Assessment and Taxation and County Surveying for recording. [MCC 33.7790(D)].**

5. 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 portions of property being transferred between Tract 1 and Tract 2 shall be transferred through the deed descriptions (metes and bounds) describing the new properties. The transferred properties shall not exist as separate properties with their own deed or deed description. [MCC 33.7790(A)].

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 (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description and Property History:

Staff: The applicant is seeking a property line adjustment to correct an encroachment of an accessory building over the existing property line.

The County approved an accessory building in T2-07-022 that was to be 30-feet from the property line. However, the site plans utilized for the approval turned out to be inaccurate and incorrectly located the common property line. The result was the building was inadvertently constructed over the property line. The error was discovered after the building had been constructed. The applicant ultimately wants to construct a replacement dwelling on Tract 1 in the future but the encroachment prevents the County from approving a replacement dwelling pursuant to MCC 37.0560 – Code Compliance. That code provision requires a property to be either in full compliance in order for the county to approve a land use or building permit; or the approval of a permit will correct the code compliance. In this instance, the approval of the property line adjustment will correct the encroachment.

2.00 Base Zone Criteria:

MCC 33.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

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 Requirements (FSZ)
Property Line Adjustment; Lot of Exception; Land Divisions.	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: According to the table in MCC 33.2256, a property line adjustment can be approved provided the newly adjusted line meets a Forest Practice Setback of at least 30-feet to all structures. In the previous land use decision that approved the accessory structure, the County approved a 30-foot forest practice setback and a 30-foot primary fire safety zone setback because the structure was located within 100-feet of an existing dwelling. Therefore, the property line needs to be relocated to satisfy that 30-foot setback. Approving this application will satisfy the forest practice and fire safety zone setback requirements.

Criteria met.

3.00 Property Line Adjustment in the CFU-2 Zone

MCC 33.2270 LOT LINE ADJUSTMENT; PROPERTY LINE ADJUSTMENT

(A) Pursuant to the applicable provisions in MCC 33.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

- A. (1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;**

Staff: Tract 1 as shown on the preliminary site plan (Exhibit 1) contains one dwelling while Tract 2 is vacant. The adjustment is to correct a building encroaching into a required setback. The completion of the land exchange is not anticipated to alter Tract 2's ability to qualify for a dwelling one way or the other.

Criterion met.

- B. (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;**

Staff: The lot configuration is as appropriate, or more appropriate for the continuation of an existing commercial forest practice on either property. Tract 2, which is vacant, will increase the amount of forest land available for harvest by receiving some of Tract 1's dense forest canopy. The area around the existing accessory structure that currently crosses the property line is already cleared because of the residential development and therefore a forest practice is improbably in this area. The end result is that more forest material may be harvested.

Criterion met.

- C. (3) The new lot line is in compliance with the dimensional requirements of MCC 33.2256; and**

Staff: The newly adjusted property line will meet the dimensional requirements of MCC 33.2256 and as approved in T2-07-022.

Criterion met.

- D. (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**

Staff: Neither property is currently developed with either a Health Hardship dwelling or a farm or forest help dwelling.

Criterion met.

- E. (5) If the properties abut a street, the required access requirements of MCC 33.2273 are met after the relocation of the common property line.**

Staff: MCC 33.2273 requires that both properties have access to a public road that is safe and convenient for emergency vehicles. Both properties have direct access to NW Rock Creek Road which is safe and convenient for emergency vehicles. The adjustment will not alter either properties access to the road.

Criterion met.

4.00 Property Line Adjustment Approval Criteria – Land Division Code

MCC 33.7790 PROPERTY LINE ADJUSTMENT

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

Staff: Two parcels exist prior to the adjustment and two parcels will exist after the completion of the adjustment. Tract 1 is one parcel made up of two tax lots. Tract 2 is one parcel and one tax lot. Therefore, no new parcels will be created by the adjustment.

Criterion met.

- B. (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**

Staff: The property line adjustment application form has been signed by both property owners involved. The adjustment will be completed with a conveyance of the adjusted portions of each property after approval of this land use decision.

Criterion met.

- C. (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**

Staff: The proposed adjustment meets the CFU-2 approval criteria as determined under Finding #3.

Criterion met.

- D. (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

Staff: The applicant has submitted the required forms as determined by the Planning Director and Multnomah County Code.

Criterion met.

5.00 Lot of Record

MCC 33.0005 Lot of Record

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 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.)

COMMERCIAL FOREST USE-2 LOT OF RECORD

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.

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.

Staff: Tract 1 was found to be a Lot of Record in case T2-07-022 and has not had its configuration altered since that finding was made.

The applicant has submitted a deed from 1956 describing Tract 2 in its current configuration. That deed, instrument #Book 1772, Page 594 (Exhibit 3) describes Tract 2 on the same deed as describing two other parcels – Tax Lot 100 adjacent to Tract 2 and a property in Washington County. Tract 2 is then described as a stand alone parcel in instrument #Book 1233, Page 1393 (Exhibit 4). The tax lot making up Tract 2 is shown separately on the 1962 zoning map (Exhibit 5) as well as the October 5, 1977 (Exhibit 6) and October 6, 1977 (Exhibit 7) zoning maps that show the change in zoning in 1977. While Tract 2 was included on the same deed as two other parcels on the 1956 deed, it is clear it was described as a separate stand alone parcel. Therefore, Tract 2 was created in 1956 or earlier which was before zoning and partition requirements. Tract 2 also was not adjacent to any property in common ownership on February 20, 1990 and therefore is a stand alone Lot of Record.

Criteria met.

6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for tentative approval for a Property Line Adjustment in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

7.00 Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2010-844 at the Land Use Planning office.

Exhibit #	Description of Exhibit
1*	Applicant's Tentative Site Plan
2*	Procedures to Complete a Property Line Adjustment
3	1965 Deed Book 1772, Page 594
4	1977 Deed Book 1233, Page 1393
5	1962 Zoning Map
6	October 5, 1977 Zoning Map
7	October 6, 1977 Zoning Map