

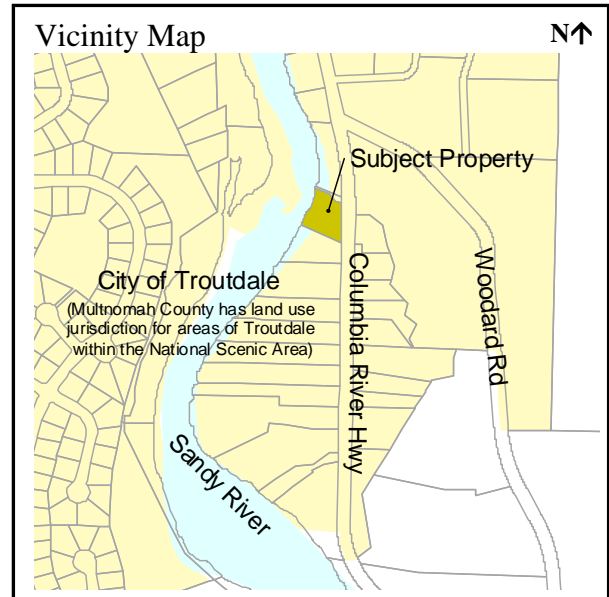


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2011-1954
Permit: Lot of Record Determination
Location: 1785 E. Historic Columbia River Hwy
TL 1600, Sec 31BC, T1N, R4E, W.M.
Tax Account #R831302490
Applicant: Leslie Ann Hauer; Tom Sisul
Owner: Joyce L. Veggen



Summary: Lot of Record Determination to determine if the subject property was lawfully created in accordance with all land division and zoning rules in place at the time of the property's creation.

Decision: The subject property is a legal parcel (also known as a Lot of Record) as defined in MCC 38.0015 Parcel.

Unless appealed, this decision is effective Tuesday, March 6, 2012, at 4:00 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, February 21, 2012

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 38.0640. 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 Columbia River Gorge Commission 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, March 6, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 38.0015 Definitions – Parcel, 38.0560 Code Compliance

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.multco.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 (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 Legal Parcel Issue:

Staff: The applicants are requesting a Lot of Record determination. Lot of record as a term is used outside of the National Scenic Area (NSA). In the NSA, a Lot of Record is also known as a Parcel as defined in MCC 38.0015.

2.00 Property History:

Staff: The property is part of the Thompson Villa Tracts subdivision, originally platted in 1917 and in unincorporated Multnomah County. The property was annexed into the city limits of Troutdale in 1971. When the NSA Act was passed in 1986, Counties were given jurisdiction over lands within the NSA if a city that had land in the scenic area chose not to adopt the Gorge Management Plan and an implementing zoning ordinance. The City of Troutdale did not adopt the management plan and therefore zoning jurisdiction and responsibility was given to Multnomah County. Between the adoption of the Gorge Act in 1986 and the adoption of Multnomah County’s NSA Code in 1993, the Gorge Commission processed land use applications in the National Scenic Area.

Previous land use applications have been submitted for the property and decisions issued, but they did not include legal parcel findings. Those decisions were NSA 16-98, NSA 5-99, and T2-09-041.

Case NSA 16-98 was a request for river bank stabilization which was denied by a Hearings Officer. The question of whether or not the property was a legal parcel was not addressed. The application focused on whether or not rip rap could be placed in the Sandy River.

Case NSA 5-99 was also a request for river bank stabilization and was withdrawn by the applicant.

Case T2-09-041 was a request by Northwest Natural Gas Company to install a 1-inch poly natural gas service pipe by directional bore from the main line in the Columbia River Highway to the house. Full Compliance and Legal Parcel findings were not required under MCC 38.0560 Code Compliance and Applications because the work was being performed by the utility company and was related to an easement as permitted in MCC 38.0560(A)(3). That provision does not require full compliance for the application to be approved.

3.00 Legal Parcel:

MCC 38.0015 Parcel

(a) Any unit of land legally created by a short division, partition, or subdivision, that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, or sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and

land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the U.S. Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because it:

- 1. Is a unit of land created solely to establish a separate tax account;**
- 2. Lies in different counties;**
- 3. Lies in different sections or government lots;**
- 4. Lies in different zoning designations; or**
- 5. Is dissected by a public or private road.**

Staff: Information in the record indicates the property configuration was modified several times since being platted in 1917. Staff has identified the following actions and important events based on information submitted by the applicants and materials available to staff:

1. 1917 – The original subdivision lot, Lot 35, was platted (Exhibit B.7).
2. 1944 – Based on information submitted by the applicant, the first configuration change occurred in 1944 with the recording of a deed instrument – Book 839, Page 562-563 (Exhibit A.3). The northern segment known as the ‘panhandle’ was broken out.
3. 1954– Southern property line is moved north as part of a conveyance to the McCoy family (Exhibit A.10).
4. 1971 – City of Troutdale annexed property.
5. 1980 – Veggen purchases property. First deed submitted describing southern property line as north of original Lot line and location described in 1944 (Exhibit A.4).
6. No specific date – The southern property line is rewritten in conveyance deeds that added parties to the ownership of the property. In their supplemental information, the applicant includes an explanation statement that notes the new legal description on that deed for the subject property was ‘less than clear.’ That legal description uses the legal description of the property immediately to the south to help delineate the subject properties boundaries. The property to the south, owned by the same person, is also ‘less than clear’ which the applicant argues causes confusion over the actual description of both properties. According to the applicant, the errors in the deed descriptions include wrong segment lengths and a wrong bearing and distance call, but the intent of the legal description is to match what is shown as “old property line” in City of Troutdale file 89-013MP.

7. 1985 – State adopts ORS 92.017¹. The newly adopted statute made clear that Lots, as defined in ORS 92, remain discrete and in place unless the lines are vacated or further divided.
8. 1986 – Gorge Act passed by congress. Gorge Commission established with oversight over areas within the National Scenic Area – including the subject property.
9. October 10, 1988 – City of Troutdale unofficially and tentatively approves Minor Partition 89-013MP. Since approval should have been sought from Gorge Commission first, Troutdale mails Commission copy of approval as a courtesy to Veggen requesting formal approval from Gorge Commission (Exhibit A.6).
10. October 24, 1988 – Gorge Commission issues letter stating they reviewed lot line adjustment and it was deemed not to be significant and no further approval was required by the Commission (Exhibit A.5).
11. October 26, 1988 – After receiving Gorge Commission letter, Troutdale signs PLA survey granting official tentative approval² to adjustment (Page 5, Exhibit B.6). Troutdale sends signed documents to Veggan to record new legal descriptions (Page 7, Exhibit B.6).
12. November 3, 1988 – New legal descriptions and site plan are recorded with the Records Office of the Division of Assessment and Taxation– Book 2152 Pages 1948 through 1952 (Exhibit A.6). No plat/survey was recorded with the Surveyors office.
13. 1990 – State statute requires partition plats be recorded for land divisions consisting of three or fewer parcels.
14. 1993 – Multnomah County adopts new National Scenic Area zoning code and assumes planning authority from the Gorge Commission over the National Scenic Area within Multnomah County’s boundaries – including properties within the City of Troutdale that are located east of the Sandy River such as the subject property.
15. 1993 – ORS 92.017² is modified and includes the term “parcel” to include properties created from a partition plat. The change meant that parcels created through a partition plat had discrete property lines that couldn’t be relocated with a property line adjustment. A replat or filing of a partition plat was the only way to relocate plat or partition plat boundaries.
16. May 15, 2009 – City of Troutdale rescinds its city zoning code for properties within the National Scenic Area³.

After the above facts were established, the applicant submitted further substantial information including additional deeds and past versions of ORS 92 that were applicable to some of the configuration changes. Additionally, Staff was able to obtain a historic copy of Troutdale’s subdivision code that was applicable to the property changes.

¹ ORS 92.017: “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.” “Parcel” was added in the 1993 version.

² Subdivisions and property line adjustments are granted “tentative” approval by local jurisdictions. It is considered tentative because upon approval, the applicant must then create the official documents dividing and/or transferring the property. Those documents must then be reviewed by the local jurisdiction for consistency and compliance with the original and approved land use decision or action. If they are found to be consistent and compliant, the local jurisdiction then signs-off on the division and/or transfer. The applicant then must take the final steps to complete the process which is to record the new legal descriptions with the records office and after 1990, file the appropriate plat or survey with the Surveyors office.

³ Between 1993 and May 15, 2009, properties had to receive approval for land use actions by both City of Troutdale and Multnomah County. With the rescinding of Troutdale zoning, property owners only needed approval from Multnomah County for land use actions.

Based on the above facts and supplemental information in the record, staff makes the following findings regarding the corresponding numbered facts:

FINDING 1: Lot 35 of the Thompson Villa subdivision plat met state subdivision rules in place at the time it was platted. The County's first subdivision rules were adopted on April 19, 1955. No zoning was in place.

FINDING 2: The 1944 deed describes Lot 35 without the northerly 'panhandle' piece now identified as Tax Lot 1500 – effectively dividing the subdivision lot. The deed also describes the subject property as containing a non-contiguous triangular piece to the southeast within its description. In 1944 there were no zoning rules in place, no partition requirements, and no replat requirements. Subdivision lot lines were not discrete as currently described statute until ORS 92.017 was adopted in 1985 and modified in 1993. Therefore alteration of lot lines was not regulated at the time the 'panhandle' was divided off. The 1944 land division was lawful since there were no minimum lot size or partition requirements. Both properties that made up Lot 35 Thompson Villa Tracts were legal parcels in 1944.

FINDING 3: The applicant has submitted supplemental information on the boundary change of the southern property line and it appears it occurred in 1954 (Exhibit A.10). That deed transferred the southern 40-feet of Lot 35, Thompson Villa tracts to the property to the south. Multnomah County first adopted zoning for the property in 1958 so the change was not subject to zoning or land division requirements.

FINDING 4: Once the City of Troutdale annexed the property in 1971, Multnomah County's authority over zoning requirements was removed from the property.

FINDING 5 & 6: In 1980 when Veggen obtained title to the property (Exhibit A.4) the City of Troutdale still had zoning jurisdiction. Staff concurs with the applicant that the legal description included on the 1980 deed is less than clear. Staff also concurs that the property line distance call outs were erroneous and the intent of the deed was to describe the property as described in the 1954 deed – where the southern 40-feet of Lot 35, Thompson Villa Tracts was transferred to the property immediately to the south. These facts would be consistent with the recent discussions that staff had with Elizabeth McCallum, Senior Planner for the City of Troutdale, that there were no records of a property line adjustment or land division for the property until 1988 when the city processed permit 89-013MP.

FINDING 7: The adoption of ORS 92.017 in 1985 changed how jurisdictions were required to look at subdivision lots. Oregon Revised Statute 92.017 states:

"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."

The statute specifically defines lots and parcels. In essence, the statute said that the platted subdivision lines remained in place unless one of two actions took place: a vacation, which dissolved them; or a further division of the property which would require a new plat to be recorded, thus superceding the original lot lines. This statute was later interpreted to mean that lot lines created by a subdivision could not be moved through a property line adjustment.

The change to the statute and subsequent interpretations further causes confusion because the transfer of the southern 40-feet of the subject property did not exactly match the southern boundary of the Thompson Villa Tracts subdivision boundary. Additionally, the subdivision boundaries still show on the tax lot maps and legal descriptions of the properties because they were not altered through a replat

or vacation after 1985. However, the previous description of the subject property by metes and bounds effectively removed the original property lines of Lot 35, Thompson Villa Tracts because it was initiated prior to 1985.

FINDING 8: Passage of the Federal Columbia River Gorge National Scenic Area Act in 1986 did not materially change zoning and land division requirements for property reconfigurations. It did however add an additional layer of review with the addition of the Gorge Commission as a reviewing agency on all development – including land divisions and property line adjustments – for consistency with the National Scenic Area Management Plan.

FINDING 9: In 1988, the owners of the subject property sought a property line adjustment with the property immediately to the south, which they also owned. Troutdale accepted an application and processed it through a Minor Partition review since their code did not have a property line adjustment provision. Considering the state adoption of ORS 92.107 in 1985, it seemed reasonable the adjustment was also processed as a minor partition to satisfy ORS 92.017's requirement of moving a lot line be through a vacation, *or further division* (aka a partition).

However, the submittal of a minor partition/adjustment to the City of Troutdale was premature as the newly enacted Columbia River Gorge National Scenic Area Act required such an application to first be made, and approved, by the Gorge Commission before the city could review it. Staff believes that the relative newness of the new federal requirements enacted on land within an incorporated city caused confusion for both property owners and municipal staff alike. Once the required permit sequencing was identified, Troutdale mailed the minor partition/property line adjustment to the Gorge Commission as a courtesy to the Veggen's as stated in their letter to the Gorge Commission (Exhibit A.6). Official approval was withheld until such time as the Gorge Commission approved the adjustment. Staff believes that courtesy and action corrected a procedural error.

FINDING 10: The Gorge Commission gave their approval of the minor partition/property line adjustment in a letter dated October 24, 1988. This satisfied the Management Plan's requirements as identified in © of the definition of Parcel in MCC 38.0015.

FINDING 11 & 12: After receiving the Gorge Commission's approval of the minor partition/property line adjustment, Troutdale reviewed the legal descriptions and survey for consistency with Troutdale permit 89-013MP, stamped off the official tentative approval on October 26, 1988 and sent those documents to the property owner (Page 7 Exhibit A.6). With that action, Troutdale completed their involvement with the application and process. Elizabeth McCallum, Senior Planner with the city stated in an email to Multnomah County Staff (Exhibit B.12) that they viewed the resulting configuration of the property as a Lot of Record.

It must be noted that a city giving tentative approval of a minor partition/lot line adjustment and signing the new legal descriptions and survey does not complete the process. The last steps of the process to finalize the action must be completed by the applicant. Staff originally believed upon receipt of this application that the two steps to be completed by the applicant before the adjustment was memorialized in 1988 were:

1. Recording of the new legal descriptions and approved survey plan with the County Recorders Office, and
2. Filing of the survey with the County Surveyor's office.

Multnomah County believed the two new legal descriptions, along with the survey, would have acted as a replat when filed with the County Surveyor as is normal practice in Multnomah County.

Additionally, in support of that interpretation, staff discovered that a three lot partition was approved on the property immediately to the south of the two properties involved in 89-013MP. In survey 50273 (Exhibit B.10), it is clear the recording of the survey was the final step of a partition based on the narrative and parcel numbers on the survey. Such action would be consistent with section © of the definition of Parcel in MCC 38.0015:

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the U.S. Forest Service Office prior to the Final Interim Guidelines..

On November 3, 1988 the owner recorded the new legal descriptions and survey with the Records Office, fulfilling the first step. Recording those documents with the Records Office did not file the survey with the Surveyors Office. Staff reviewed the County Surveyor's database for evidence of the survey being recorded and completing the process. No survey was found.

However, the applicant has argued that because the action and intent of 89-013MP was a property line adjustment and not a partition, the requirements to fulfill and finalize the action were not the same as a partition or subdivision under the City of Troutdale's subdivision code and state law. In consultation with City of Troutdale planning staff, a full copy of the City's subdivision code from 1987 was obtained (Exhibit B.15). Final Plats are discussed in section S6.013 on page 27 of the subdivision code and reference what is needed for a final plat after receiving approval of the tentative plan. The key piece of evidence from the city's code is section 6.014 on page 30:

6.014 *Tentative and Final Plans for Major and Minor Partitions.*

A *Standards for major and **minor partitions** are essentially the same as for subdivision tentative plans and final plats except the following:*

1. *The required size of the plan sheet is 8 ½ x 11 inches;*
2. *Data requirements **do not include a 'proposed name'** for the partition'*
3. *"Proposed improvements" need be shown only where applicable; and*
4. *Only five (5) copies of tentative and final plans need be submitted.*

A *Standards for major and **especially minor partitions may be modified by the Director on a case-by-case basis** to reduce or eliminate non-essential requirements.*

(Bold and underlined emphasis added by Multnomah County staff)

It is clear that the City Planning Director was given broad authority on what to require in order to finalize a minor partition – or in this case a property line adjustment processed through a minor partition – in order to reduce unnecessary requirements. This supports the applicant's argument that the property owner fulfilled all required steps to finalize the adjustment when they filed the new legal descriptions and survey with the County recorder.

Staff finds that City requirements were not the same as the County's planning requirements and recordation of a survey with the Surveyor's office was not explicitly noted. Furthermore, staff acknowledges the broad discretion granted to the City Planning Director in the 1987 code. It is reasonable to believe that city staff did not require a survey be recorded as partition plats were not required under state law until 1990 and such action was not called out by city code. This is further

supported by Troutdale staff noting in an email (Exhibit B.12) that the resulting configuration of the adjustment would be a lot of record.

The applicant also provided staff with a copy of the 1985 edition of ORS 92 for land divisions (Exhibit A.8). On page 762, Section 4(3) it notes:

(3) the governing body of a city or county may use procedures other than replatting procedures in sections 2 and 3 of this 1985 act to adjust lot lines as described in ORS 92.010(8), as long as those procedures include the recording or other central filing of the final lot line adjustment.

This language calls for recording of the new documents, but only in a “central filing” location. The statute does not specifically mention what that central filing location should be. Considering that recording of new legal descriptions with the County Recorder is the appropriate location to transfer property ownership, it is reasonable to believe recording the documents with the Recorders Office would satisfy the statute. With no pins being set and the same family owning both properties involved with the adjustment, there was no statutory trigger requiring filing a survey with the Surveyor’s Office nor any local city code requiring such action, unlike in Multnomah County’s land use code.

FINDING 13: In 1990, the state legislature passed new rules that the partitioning of a property would need to be finalized with the filing of a partition plat with new submission standards.

FINDING 14 & 15: Multnomah County adopted zoning code for the National Scenic Area in 1993 and the subject property was under dual planning authority by Troutdale and Multnomah County. The state adopted new language in ORS 92.017 which included the term ‘parcel.’

FINDING 16: In 2009, Troutdale rescinded it’s zoning for the subject property and other properties within the city limits but within the National Scenic Area. Multnomah County now had sole zoning authority over qualifying properties.

Taken as a whole, staff finds that the action taken by the City of Troutdale and the property owner adequately satisfied local zoning and land division ordinances as well as state statutes. Therefore, the property is a legal parcel as defined in MCC 38.0015.

4.00 Conclusion

Based on the findings and other information provided above and in the record, the applicant has carried the burden necessary to demonstrate the property is a Legal Parcel.

5.00 Exhibits

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

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 T2-2011-1954 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	Application Form

A.2	3	Applicant's November 4, 2011 Narrative
A.3	1	1944 Deed Recorded in Book 839 Pages 562-563
A.4	2	May 2, 1980 Deed Recorded in Book 1438, Pages 1177-1178
A.5*	1	October 24, 1988 Letter From the Columbia River Gorge Commission Approving a Property Line Adjustment
A.6*	7	The City of Troutdale's October 10, 1988 Letter to the Columbia River Gorge Commission and Troutdale's Minor Partition Approval 89-013MP
A.7	2	Oregon Laws 1979, Chapter 824 Regarding ORS 92
A.8	2	Oregon Laws 1985, Chapter 369 Regarding ORS 92
A.9	5	Applicant's January 31, 2012 Supplemental Narrative
A.10	2	1954 Deed Book 1664, Pages 474-475
A.11	2	1976 Deed Book 1094, Pages 135-136
A.12	2	1976 Deed Book 1118, Pages 1786-1787
A.13	2	1988 Deed Book 2168 Pages 1857-1858
A.14	3	1988 Deed Book 2161, Pages 1163-1165
A.15	1	Applicant's Summary of Deed Conveyances
'B'	#	Staff Exhibits
B.1	1	A&T Property Information Sheet
B.2	1	A&T Tax Lot Map
B.3	19	Agency Completeness Review Packet
B.4	6	November 23, 2011 Opportunity to Comment Letter and Mailing List
B.5	1	December 8, 2011 Letter Notifying Applicant of Comments Received
B.6*	2	Staff's January Summary of Important Actions and Events
B.7*	1	1917 Plat of Thompson Villa Tracts
B.8*	2	1944 Deed with Staff's Notations and Colored Tax Lot Map Reflecting Configuration
B.9*	3	1980 Deed with Staff's Notations and Colored Tax Lot Map Reflecting Configuration
B.10	1	Survey 50273 From 1988 – Partition Plat Survey of Three Parcel Partition of a Parcel South of Subject Lot
B.11	5	June 9, 2009 Memorandum From City of Troutdale Regarding a Proposed Development on Subject Property
B.12*	1	August 9, 2011 Email From Elizabeth McCallum, City of Troutdale Senior Planner, Noting a Minor Partition was

		Approved by the City, no Partition Plat was Recorded, and the Action Appeared to be a Property Line Adjustment
B.13	4	2009 Intergovernmental Agreement Between Multnomah County and Troutdale Rescinding Troutdale Zoning Over City Property in the National Scenic Area
B.14	1	1962 Zoning Map
B.15*	10	City of Troutdale's 1987 Subdivision Code
'C'	#	Comments Received
C.1	1	Comment Letter from Douglas M. Briggs, Jr.
C.2	2	Comment Letter from Friends of the Columbia Gorge