

**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.multco.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:** T2-2011-2045

**Permit:** Category 4 Land Division

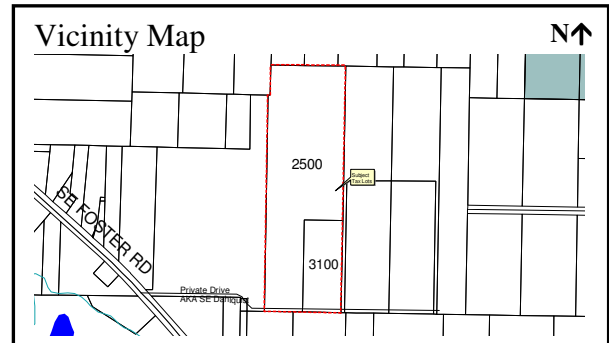
**Location:** 16919 SE Foster Road  
Tax Lot 2500, Section 19A,  
Township 1 South, Range 3 East, W.M.  
Tax Account #R993190420

**Applicant:** Jason Karam

**Owner:** Charles Karam

**Base Zone:** Rural Residential (RR)

**Overlays:** None



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**Summary:** The applicant is proposing a single parcel land division to make Tax Lot 2500 a legal Lot of Record under the provision for 'Creation Of Lots And Parcels That Were Unlawfully Divided' in Multnomah County Code (MCC) 11.45.117.

**Decision:** Approved.

Unless appealed, this decision is effective April 2, 2012 at 4:00 PM.

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Issued by:

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

For: Karen Schilling- Planning Director

Date: Monday, March 19, 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 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 April 2, 2012 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 11.15.2202-2230, Rural Residential Zone; 11.15.2222, Lot of Record; 11.45.005-860, Land Division Ordinance; 11.45.110, Type 4 Land Division; 11.45.117, Creation Of Lots And Parcels That Were Unlawfully Divided; MCC Chapter 37 - Administration and Procedures. Multnomah County Road Rules (MCRR) 1.000-22.000.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) 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> or <http://web.multco.us/transportation-planning>

### **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 pursuant to MCC 37.0690(A) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, 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 partition shall be completed as shown and described in the application materials submitted by the applicant. [MCC 37.0580]**
- 2. The applicant shall complete the procedures given in the enclosed 'Applicant's Instructions for Finishing a Land Division' (Exhibit B.3). The surveyor shall complete the procedures in the enclosed 'Surveyor's Instructions for Finishing a Land Division' (Exhibit B.4), which provides instructions for drafting required materials. Before the final plat is submitted to**

**the Multnomah County Surveyor's Office, two (2) copies of the plat are to be filed with the Planning Director. Within 10 business days of filing, the Director will determine whether the plat complies with this decision and the conditions of approval contained herein. At such time as the plat complies with this decision a letter of zoning compliance will be provided to the Multnomah County Surveyor.**

- 3. No additional lots or parcels shall be created through this process.**
- 4. Within 90 days of final approval of this decision, the property owner(s) shall record a partition plat or subdivision plat as appropriate, in accordance with the requirements of ORS Chapter 92.**
- 5. Under this approval, the date of creation of the legalized parcel or lot shall be the date the partition or subdivision plat is recorded.**
- 6. Development of the property shall be subject to the laws in effect at the time of the development application pursuant to ORS 215.427(3)(a). No retroactive use of land use laws is authorized by this code provision once the parcel or lot is lawfully created.**

## **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 Background:**

**Staff:** The subject property (Tax Lot 2500) is a 13 acre tax lot located in the Rural Residential (RR) zone district. The RR zone allows a single family dwelling to be placed on a Lot of Record (see section 2.00 below). The property owner is seeking to create a Lot of Record by legalizing the existing tax lot under the ‘Creation Of Lots And Parcels That Were Unlawfully Divided’ in Multnomah County Code (MCC) 11.45.117.

### **2.00 Rural Residential Zone:**

#### **2.1 Lot of Record**

**A.**

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

**1.**

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

**2.**

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

**B.**

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

**C.**

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

**D.**

**Except as otherwise provided by MCC .2220, .2224, and .7720, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

**Staff:** In October 1944 the subject property (Tax Lot 2500) and the property to the southwest (Tax Lot 3100) were described together as one single 16 acre property (Exhibit A.3) then known as Lot 42 (Exhibit B.5). The 16 acre property was created prior to the County’s first zoning rules, which went into effect in 1953.

On September 24, 1973 the three acre property now known as Tax Lot 3100 was partitioned from the 16 acre property by Contract of Sale recorded as Book 952, Page 492 of the Multnomah County Records (Exhibit A.4). The Suburban Residential (SR) zone district was in effect for the properties in 1973 and the partition would have needed to comply with the zoning rules for a partition in effect at the time.

In 1973, the SR zone allowed the creation of property with a minimum lot size of 10,000 square feet to 40,000 square feet. The minimum lot size was dependent upon meeting a list of minimum standards (Exhibit B.6).

To answer the question of whether Tax Lot 2500 is a lot of record, it is necessary to know whether the partition that created it and neighboring Tax Lot 3100 met the minimum standards in effect at the time for the creation of properties of 40,000 square feet or greater; the standards were:

***SR Zone District – Lot area of 40,000 sq. ft. Minimum Standards:***

- 1. Approved water supply (public or private).*
- 2. Approved individual sewage disposal system.*
- 3. Approved public access.*
- 4. Approved plan for future re-subdivision of total tract when urban conditions develop.*

While both Tax Lots 2500 and 3100 are considerably larger than the 40,000 sq. ft. minimum required in 1973 it is not known whether the lots met the four standards listed above and no evidence has been provided to suggest that Multnomah County reviewed the minimum standards at the time of the partition; therefore, staff cannot confirm that either lot currently meets the definition of a Lot of Record.

### **3.00 Land Division:**

#### **3.1 11.45.117 Creation Of Lots And Parcels That Were Unlawfully Divided**

**This Code section provides the mechanism to review and, based upon findings of compliance with specific approval criteria, to approve certain unlawfully divided lots or parcels. The review mechanism to correct an unlawfully divided unit of land differs according to the date the unlawful lot or parcel was divided as provided in (A) and (B) below, or under (C) if a land use permit was issued for a primary use. For the purposes of this section, an "unlawfully divided" lot or parcel means a lot or parcel that, when divided, did not satisfy all applicable zoning and land division laws.**

**Staff:** The subject property is a 13 acre tax lot in the Rural Residential (RR) zone district. As found in section 2.00 above, staff cannot confirm that the property met the approval standards in effect at the time it was created in 1973.

#### **3.2 A. An application to create a legal lot or parcel from an unlawfully divided unit of land divided before January 27, 1994 (eff. date of Mult. Co. Ord. 781) shall be a Category 4 Land Division and be reviewed as a Type II process. In addition to the applicable Category 4 Land Division requirements, the application shall satisfy the following approval criteria:**

**Staff:** The property resulted from a partition in 1973, which is prior to January 27, 1994. The application is for a Category 4 Land Division which has been processed as a Type II application.

##### **1. The lot or parcel either:**

##### **a. Conforms to current dimensional, access and area standards.**

**Staff:** The applicant is qualified under 'b' below.

#### **3.3 b. Conforms to the dimensional, access and density standards in effect when the lot or parcel was unlawfully divided, or**

**Staff:** The property qualifies under this standard for the following reasons:

1. Dimensional Standards: The 13 acre property is larger than the 40,000 sq. ft. minimum required by the SR zone in 1973. *The property complied with dimensional standards when divided.*
2. Access Standards: In 1973, all lots in the SR zone were require to either abut a street or have other access held suitable by the Planning Commission (Exhibit B.6). The property fronts a private road commonly referred to a Dahlquist Rd., which is an easement created by Court Order in 1970 (Exhibit A.5). Additionally, there is also an existing access permit for the property (Exhibit B.7) that was issued in 1992. Because Dahlquist is not a public road it did not meet the definition of street in 1973 (Exhibit B.6 – definitions section); however, because Dahlquist was created by an official action and because the access permit on file reveals no concerns with the property access staff finds that it is likely that access off of Dahlquist would have been considered suitable access at the time of the 1973 partition. *The property complied with the access standards when divided.*
3. Density Standards: The SR zone allowed a single family dwelling on SR zoned properties in 1973 (Exhibit B.6). The property does not contain any dwellings nor did it in 1973 (Exhibits B.1 and B.8). *The property complied with the density standards when divided.*

**3.4 c. The lot or parcel has a property line that is contiguous to a road, street or zone boundary that intersected the property and the applicable zoning district on the date the lot or parcel was unlawfully divided allowed a land division when a County-maintained road' street or zoning district boundary intersects a parcel of land. The zoning districts and effective dates that apply to this provision are as follows:**

1. The Rural Center (RC), Rural Residential (RR), and Multiple Use Agriculture-20 (MUA-20) zoning districts on or after October 6, 1977 (eff. Date of MuIt. Co. Ord. 148) and before January 27, 1994;
2. The Multiple Use Fqrest-20 (MUF-20) zoning district on or after October 6, 1977 ( eff. Date of Mult. Co. Ord. 148) and before August 14, 1980 (eff. Date of MuIt. Co. Ord. 236); and
3. The Multiple Use Forest-19 (MUF-19) and Multiple Use Forest-38 (MUF-38) zoning districts on or after August 14, 1980 (eff. Date of Mult. Co. Ord. 236) and before January 7, 1993 (eff. Date of Mult. Co. Ord. 734).

**Staff:** The applicant is qualified under 'b' above.

**3.5 D. Within 90 days of a final decision being approved under (A), (B) or (C) of this section, the property owner(s) shall record a partition plat or subdivision plat as appropriate, in accordance with the requirements of ORS Chapter 92.**

**Staff:** Condition 4 requires the property owner to record a partition plat within 90 days of the final decision.

**3.6 E. If an application to legalize a unit of land is approved under (A), (B) or (C) of this section, the date of creation of the legalized parcel or lot shall be the date the partition or subdivision plat is recorded.**

**F. Development of a parcel or lot approved pursuant to this section shall be subject to the laws in effect at the time of the development application pursuant to ORS 215.427(3)(a). No retroactive use of land use laws is authorized by this code provision once the parcel or lot is lawfully created.**

**Staff:** The criteria above are also noted in the conditions of approval (Conditions 5 and 6).

**3.7 G. From January 5, 1966 to December 31, 2000, the County's zoning ordinance specified that in cases where a building permit is required under the Multnomah County Building Code, such building permit shall be deemed to be a land use permit. When reviewing a Lot Legalization application under (C) above, building permits during this time period shall constitute a land use permit.**

**Staff:** Not applicable. The property qualifies under 'A'.

**H. The following do not qualify to legalize a lot or parcel under this code section:**

- 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.**

**Staff:** None of the above circumstances apply to the subject property. The property was divided through a recorded Contract of Sale (Exhibit A.3).

#### **4.00 Conclusion:**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Land Division to establish a Lot of Record in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

#### **5.00 Exhibits:**

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

Exhibits are available for review in Case File T2-2011-2045 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	12/16/2011

A.2	1	Applicant's Narrative	12/16/2011
A.3	3	Deed recorded as Book 876, Page 458 of the Multnomah County Records.	12/16/2011
A.4	4	Contract of Sale recorded as Book 952, Page 492 of the Multnomah County Records.	12/16/2011
A.5	1	Current Tax Map of the property – shows current dimensions of Tax Lots 2500 and 3100 and references 1970 Cir. Ct. order creating Dahlquist Road.	12/16/2011
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for Lot 2500	
B.2	1	A&T Property Information for Lot 3100	
B.3	1	Applicant's Instructions for Finishing a Land Division	
B.4	1	Surveyor's Instructions for finishing a Land Division	
B.5	1	1962 Zoning Map – Shows zoning in effect in 1973.	
B.6	21	SR zone standards from County Ordinance 100 as amended May 21, 1968.	
B.7	1	Access Permit	
B.8	1	1979 Zoning Maps with structures	
'C'	#	Administration & Procedures	Date
C.1		Incomplete Letter	
C.2		Applicant's Acceptance of 180 Day Clock	
C.3		Complete Letter (Day 1)	
C.4		Opportunity to Comment	