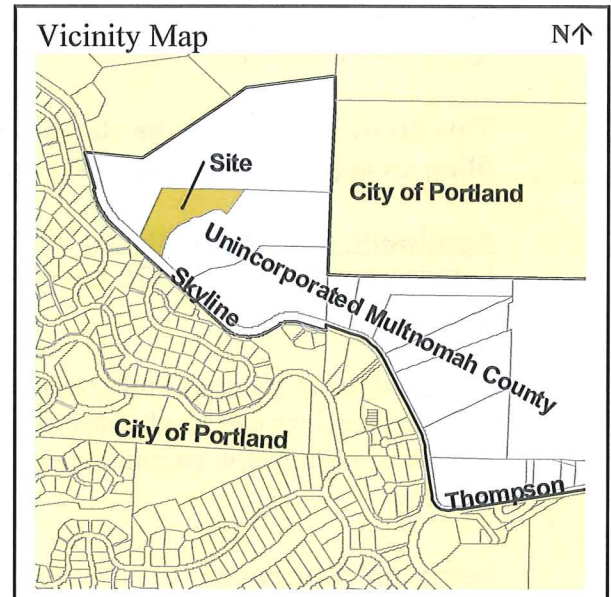


## NOTICE OF DECISION

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

**Case File:** T2-2013-3028  
**Review:** Lot of Record Determination  
**Location:** 3516 NW Skyline Blvd  
Tax Lot 1200, Section 23D  
Township 1 North, Range 1 West, W.M.  
Tax Account #R961230060  
**Applicant:** Mark R. Fisher  
Trustee of the Evelyn Norris Trust and  
Mark R. Fisher Trust  
**Owners:** Evelyn Norris Trust and Mark R. Fisher  
Trust  
**Base Zone:** Rural Residential




**Overlays:** Significant Environmental Concern for wildlife habitat (SEC-h) and streams (SEC-s)

**Summary:** Applicant is requesting a determination that the subject property is a Lot of Record pursuant to Multnomah County Code 33.3170 Lot of Record provision.

**Determination:** Tax Lot 1200, Section 23D, Township 1 North, Range 1 West, W.M. is a Lot of Record.

Unless appealed, this decision is effective Thursday, November 14, 2013, at 4:00 PM.

Issued by:

By:   
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Thursday, October 31, 2013

**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 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 Thursday, November 14, 2013 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 33.0005 Definitions – Lot of Record, MCC 33.3170 Lot of Record (Rural Residential) MCC 37.0560 Code Compliance and Applications

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 determination is based on the submitted written narrative(s) and plan(s).

### **Conditions of Approval**

1. Within six months of this determination, the property owners shall record a deed utilizing the approved legal description recorded on October 25, 1996 and stamped by Planner Gary Clifford for the Adjusted Tax Lot 16 also known as 1N1W23D – 01200. A copy of the recorded deed shall be submitted to Land Use Planning within 30 days of its recording. No future land use approvals for any building or development permits may be issued until this action is completed. [MCC 33.0560]
2. Within six months of this determination, the property owners shall record a covenant for the parcel known as tax lot 1N1W23D – 01200 that complies with Condition No. 1 of LE 9-94. A copy of the recorded covenant shall be submitted to Land Use Planning within 30 days of its recording. No future land use approvals for any building or development permits may be issued until this action is completed. [MCC 33.0560]

#### **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:**

**Staff:** The applicant is requesting a determination that Tax Lot 1200 of Section 23D, Township 1 North, Range 1 West, Willamette Meridian (1N1W23D – 01200) is a Lot of Record pursuant to Multnomah County Code (MCC) 33.3170.

### **2.00 Property Description & History:**

**Staff:** In December 1994, Land Use Planning approved an Administrative Lot of Exception for a property line adjustment to increase the subject property from 0.68 of an acre to 3.7 acres by transferring 3.02 acres from the adjacent tax lot currently known as 1N1W23D – 01300 (Exhibit A.3). Both properties at the time were zoned Rural Residential (RR) and remain so. The RR zoning provisions did not contain code language for property line adjustments and did not contain an exemption from the minimum lot size of 5 acres. The code contained a provision for Administrative Lot of Exception which was used to increase the nonconforming size of the subject parcel. After obtaining the approval of the Lot of Exception, the applicant submitted new legal descriptions (Exhibit A.4) and a record of survey (Exhibit A.5) to Land Use Planning. The County stamped the materials “Approved Lot Line Adjustment” and planner Gary Clifford signed the documents for the department. The applicant then took the legal descriptions and survey and recorded them with the County Records section and the County Surveyor (Exhibit B.2). Unfortunately, the applicant did not record them as deeds.

In 2006, Land Use Planning approved a land use decision approving the construction of a new single family dwelling on 1N1W23D – 01300. The planner made the findings that the property was a Lot of Record based upon land use decision LE 9-94 and the information before him (Exhibit B.3). The property ownership has been transferred six times since approval of LE 9-94. Staff reviewed three deeds (Exhibit B.5 through B.7) to confirm that 1N1W23D – 01300 was using the legal description approved by LE 4-94.

The subject property, 1N1W23D – 01200 has not been transferred to another property owner since LE 4-94 was approved and the legal descriptions were recorded. Property records with Assessment and Taxation indicate the tax lot is 3.71 acres. The tax map (Exhibit B.8) shows the tax lot is consistent with the approved Record of Survey recorded in November 1996 (Exhibit B.2).

### **3.00 Rural Residential Criteria:**

#### **3.01 § 33.3170 LOT OF RECORD**

**(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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 zone 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, RR zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;
- (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 33.3185, 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 33.3160, 33.3175, and 33.4300 through 33.4360, 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.

#### **§ 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 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.)**

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

**1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**

**2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

**Staff:** The parcels known as tax lot 1N1W23D – 01200 and 01300 were review through the Administrative Lot of Exception process (Exhibit A.3) in December 1994 where tax lot 1N1W23D – 01300 was reduced in size by 3.00+/- acres. This area was transferred to the parcel known as tax lot 1N1W23D – 01200. An error was made when the property line adjustment legal descriptions were recorded in October 1996 after being approved by Planning where the appropriate deed documents were not attached. In November 1996, the parcel known as 1N1W23D – 01300 was transferred to a new property owner via a Statutory Warranty Deed (Exhibit B.7) which utilized the new legal description for the parcel. When the 1996 warranty deed (Exhibit B.7) was recorded, the parcel known as tax lot 1N1W23D – 01300 was reduced in size from 14.09 acres to 11.08 acres consistent with the December 1994 approval. The Administrative Lot of Exception, LE 9-94 did not expire as the 1996 warranty deed for tax lot 1N1W23D – 01300 was recorded prior to December 12, 1994 and the lot of exception utilized. In 2006, the County found that the parcel known as 1N1W23D – 01300 was a Lot of Record (T2-06-093). See Exhibit B.3 for documentation.

This lot of record request is for the parcel known as 1N1W23D – 01200. The property owner for the two parcels followed the proper land use actions to adjust the two legal parcels in 1994. The property owner obtained County Planning’s review of the survey (Exhibit A.5) and recorded it with the County Survey department (Exhibit B.2) on November 14, 1996. The legal descriptions for the two reconfigured parcels were reviewed and stamped by Planning in October 1996 and these new legal descriptions were recorded on October 25, 1996 prior to the expiration of LE 9-94 in December 1996. The property owner satisfied all applicable property line adjustment provisions. Once the same property owner records the submitted bargain and sale deed to themselves or others with the approved legal description and a covenant complying with Condition No 1 of LE 9-94 for the adjusted tax lot 16 (1N1W23D – 01200) which corresponds with the record of survey #55208, the parcel will be in its lawful configuration and a Lot of Record. A condition requires the recording of a deed and covenant in a timely fashion.

The parcel known as 1N1W23D – 01200 is 3.70 acres. The Rural Residential zone has a minimum lot size to create a new parcel is 5 acres. LE 9-94 granted a reduction in the minimum lot size so that a 0.68 of an acre parcel could be upsized to only 3.70 acres instead of the required 5 acres. The property has over 200 feet of road frontage adjacent to NW Skyline Boulevard. The parcel known as 1N1W23D – 01200 is not a foreclosed security interest, created by court decree or a tax lot created solely for assessment & taxation. The property is not located within an “acknowledged \unincorporated community”.

*Upon completion of the conditions of approval, the parcel known as 1N1W23D – 01200 will be a Lot of Record pursuant to MCC 33.3170.*

#### 4.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural 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 T2-2013-3028 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	8.07.2013
A.2	2	Supplemental Information	8.07.2013
A.3	4	Application & Decision for Administrative Lot of Exception approved on December 2, 1994	8.07.2013
A.4	6	Stamped Property Descriptions recorded on October 25, 1996	8.07.2013
A.5	1	Record of Survey stamped on October 25, 1996	8.07.2013
A.6	4	Unrecorded Bargain & Sale Deed	8.20.2013
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N1W23D - 01200	8.07.2013
B.2	1	Record of Survey #55208 recorded with MC Survey on November 14, 1996	10.28.2013
B.3	13	T2-06-093 decision	10.28.2013
B.4	3	Instrument #94 079688 recorded May 20, 1994	10.29.2013
B.5	2	Bargain and Sale Deed (Instrument #2011-085569) recorded August 02, 2011	10.29.2013
B.6	2	Statutory Warranty Deed (Instrument #2006-046777) recorded March 15, 2006	10.29.2013
B.7	6	Statutory Warranty Deed (Instrument #96-168316) recorded November 05, 1996	10.29.2013
B.8	1	Assessment and Taxation Map for 1N1W23D	10.29.2013

'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1 – August 20, 2013)	8.20.2013
C.2	5	Opportunity to Comment	8.28.2013
C.3	7	Administrative Decision	10.31.2013