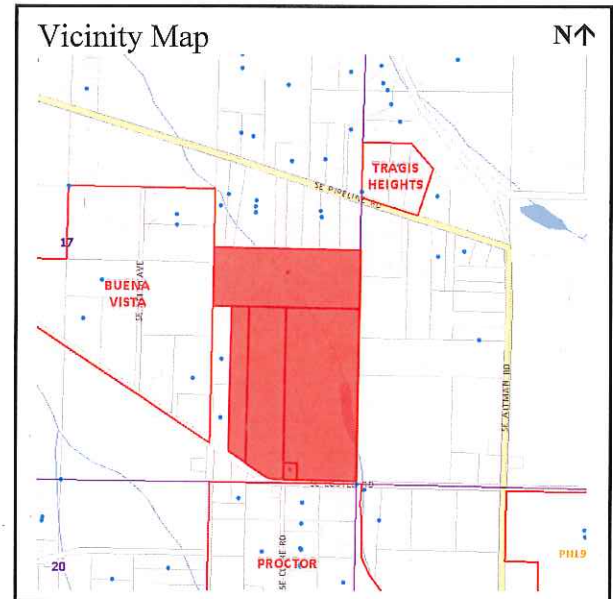


NOTICE OF DECISION

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

Case File: T2-2013-3052
Permit: Lot of Record Determination
Location: 31847 SE Lusted Road
Tax Lot 400, 500, 600, 700, 1000, and
100 Section 17D,
Township 1S, Range 4E, W.M.
R994170330, R994170230,
R994170320, R994170880,
R994170250, and R994170520
Applicant: John Holmlund
Base Zone: Exclusive Farm Use (EFU)
Overlays: None.



Summary: Applicant is requesting a determination that each subject property is a Lot of Record and separately conveyable.

Decision: The Planning Director finds all subject properties were lawfully created parcels. Tax Lots 400, 500, 700 and 1000 are all separately conveyable Lots of Record. Tax Lots 600 and 100 together form one lot of record and must be conveyed together to keep the lot of record intact.

Unless appealed, this decision is effective Wednesday, April 16, 2014.

Issued by:

By: 
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, April 2, 2014

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, or don.d.kienholz@multco.us.

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 Wednesday, April 16, 2014 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 36.0005 Lot of Record, MCC 36.2675 Lot of Record.

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.

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 seeking a determination by the Planning Director that the subject properties are all standalone and conveyable Lots of Record as defined in the Exclusive Farm Use (EFU) zone.

2.00 Code Compliance:

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit 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.**

Staff: A lot of record determination is not a development permit.

Criterion met.

3.00 Lot of Record:

MCC 36.0005 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 36.7785. 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.

* * *

MCC 36.2675 Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 36.0005, 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.

(4) Exception to the standards of (A)(2) above:

(a) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;

(7) May 16, 2002, Lot of Record section amended, Ord. 982;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 36.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed 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;

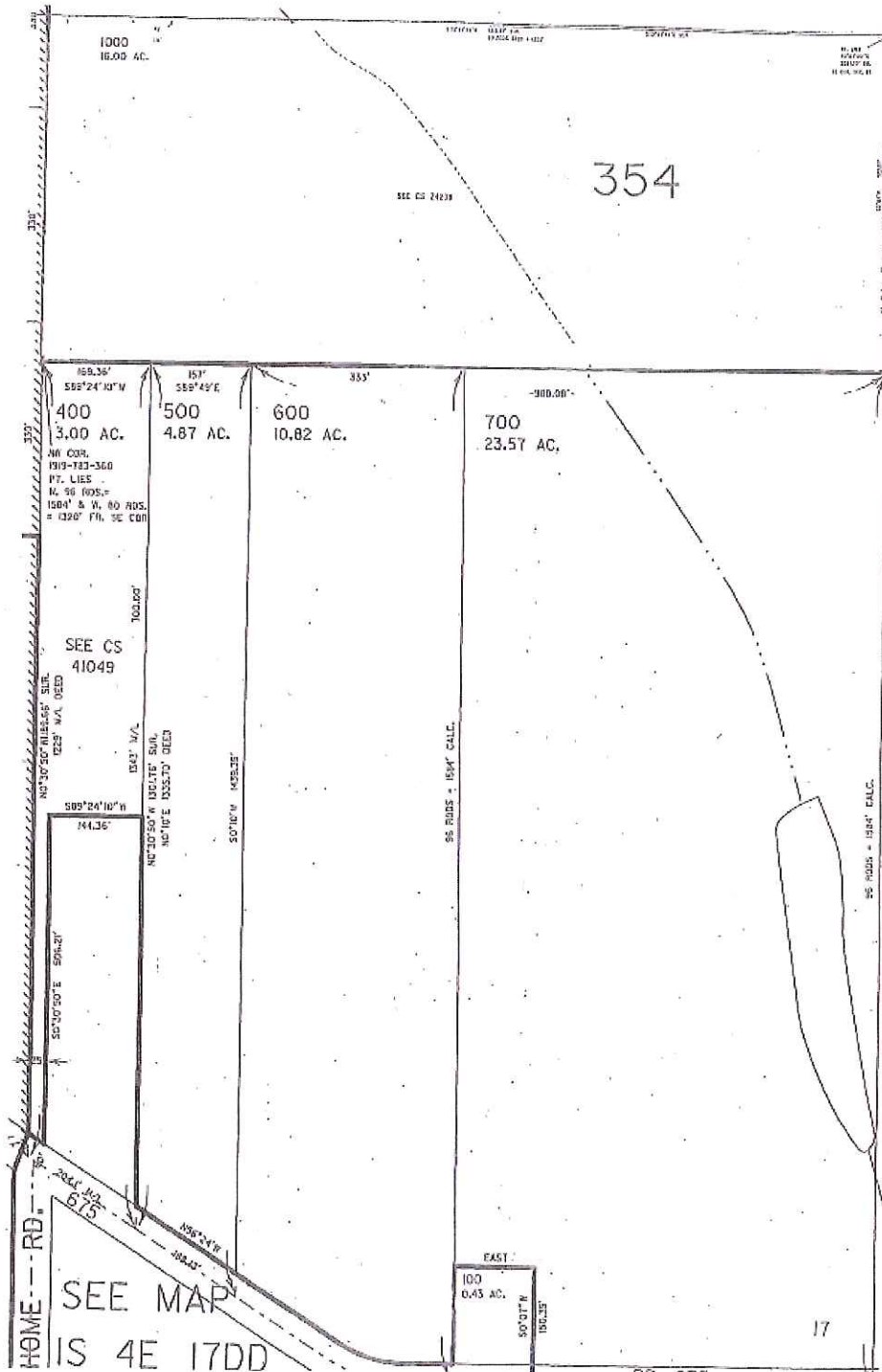
(3) A Mortgage Lot.

(4) An area of land created by court decree.

Staff: After the application was made complete, the Opportunity to Comment was mailed and a draft decision rendered, the applicant requested to alter the application and include five other contiguous properties owned by the Holmlund family in the Lot of record determination. Staff sent out a modified Opportunity to Comment for the other properties.

Because the current EFU code has aggregation and tract requirements, staff put together the Figure 1 to show tax lot numbers and configuration and Table 1 to show ownership on February 20, 1990.

Figure 1



- A. **Tax Lot 500:** The original applicant provided a deed recorded in Book 174, Pages 183-184 recorded on May 31, 1932 (Exhibit A.5) that describes the primary subject property, Tax Lot 500, in its current configuration. In 1932 there were no zoning requirements in place. Partition requirements were not applicable until 1978. As such, the subject property met the zoning and land division rules in place at the time it was put into its current configuration. The subject property is a legal parcel.

Subsequent deeds with the same legal description were also included showing the configuration of Tax Lot 500 has not been altered. They include a deed recorded in Book 610, Pages 626 and 627 recorded in 1968 (Exhibit A.6); a contract recorded in Book 1416, Pages 829 and 830 recorded January 30, 1980 (Exhibit A.7) and completed with a deed recorded in Book 2644, Page 789 on January 20, 1993; and a deed recorded with instrument 94-44378.

Because the property is in the Exclusive Farm Use zone, there are additional Lot of Record requirements found in MCC 36.2675 above. Of particular interest are the aggregation requirements of MCC 36.2675(A)(2). Table 1 below shows all the subject properties of this application as well as adjacent property ownership in 1989 and 1990.

Table 1.

	Ownership				
Property R#	1989	1990	Old Tax Lot Number	Parcel Size	Tax Lot in Figure 1
994170330	Paul Lundbom (Via Contract)	Paul Lundbom	33	4.87 Acres	500
994170220	Joan Ferdon	Joan Ferdon	22	1.06 Acres	-
994170230	Carol Thompson (Via Contract)	Carol Thompson	23	16 Acres	1000
994170320	Betilue Lundbom	Betilue Lundbom	32	3 Acres	400
994170500	Greg Brown	Michael and Penny Haight	50	1.60 Acres	-
994170800	Michael Sparks	Michael Sparks	80	1.86 Acres	-
994170220	Daryl Lundbom (Via Contract)	Daryl Lundbom	25	23.57 Acres	700
994170520	Elizabeth Jacoby (Via Contract)	Elizabeth Jacoby	52	0.43 Acres	100
994170880	Elizabeth Jacoby (Via Contract)	Elizabeth Jacoby	88	10.82 Acres	600

Under MCC 36.2675(A)(2)(a), properties that are under the *same ownership* and contiguous would be aggregated to form clusters of properties of at least 19-acres in size. Therefore, staff must look at the overall ownership pattern as of February 20, 1990 to determine possible aggregation issues.

Same ownership is defined under MCC 36.2610 as:

"Same Ownership - Refers to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control. For the purposes of this subsection, the seller of a property by sales contract shall be considered to not have possessory interest."

The applicant has provided a contract of sale dated January 28, 1980 (Exhibit A.7) that shows the property known as Tax Lot 500 was sold to Paul Lundbom. As seen on the table above, Paul Lundbom did not own any property adjacent to the subject parcel on February 20, 1990. As such, the subject parcel would not be *aggregated* to another property for Lot of Record Purposes and could be conveyed separately.

Tax Lot 500 is a standalone conveyable Lot of Record.

- B. Tax Lot 400:** The applicant provided a deed recorded in Book 902, Page 1198 recorded on January 4, 1973 (Exhibit A.11) that describes the subject property, Tax Lot 400, in its current configuration with a size of 3-acres. In 1973, the subject property was zoned Suburban Residential (SR). The SR zoning district required a 20,000 square foot minimum lot size if the property was served by public water (it is served by the Pleasant Valley Water District), road frontage and access to a public road. In 1973 there were no partition requirements for the creation of 3 or fewer parcels within a calendar year. As such, the subject property met the zoning and land division rules in place at the time it was put into its current configuration. The 3-acre subject property was lawfully created.

Deed records demonstrate that from January 30, 1980 through March 1995 the property was owned by Betilue Lundbom, including on February 20, 1990 for aggregation purposes in the EFU zone. Records demonstrate that there were no adjacent properties in common ownership on February 20, 1990. Therefore subject property is a separately conveyable Lot of Record.

Tax Lot 400 is a standalone conveyable Lot of Record.

- C. Tax Lot 700:** The applicant provided a deed recorded in Book 2105, Page 653 through 655 (Exhibit A.13) recorded on March 8, 1962 that describes the subject property, Tax Lot 700, in its current configuration with a size of 23.57-acres. In 1962, the subject property was zoned Suburban Residential (SR). The SR zoning district required a 20,000 square foot minimum lot size if the property was served by public water (It is served by the Pleasant Valley Water District), road frontage and access to a public road. In 1962

there were no partition requirements for the creation of 3 or fewer parcels within a calendar year. As such, the subject property met the zoning and land division rules in place at the time it was put into its current configuration. The 23.57-acre subject property was lawfully created.

Tax Lot 700 is a standalone conveyable Lot of Record.

- D. Tax Lot 1000:** Tax Lot 1000 was found to be a lot of record under a previous land use case, PRE 0-7. That decision made a finding the property was created in 1936 and prior to zoning or land division requirements.

Tax Lot 1000 was lawfully created and is a Lot of Record.

- E. Tax Lot 600 and 100:** The applicant provided a deed recorded March 8, 1962 (Exhibit A.12) that describes the property in the same configuration as it is in today. In 1962 the subject property was zoned Suburban Residential (SR). The SR zoning district required a 20,000 square foot minimum lot size if the property was served by public water (It is served by the Pleasant Valley Water District), road frontage and access to a public road. In 1962 there were no partition requirements for the creation of 3 or fewer parcels within a calendar year. As such, the subject property met the zoning and land division rules in place at the time it was put into its current configuration. The 10.82-acre subject property was lawfully created.

The applicant also provided a deed recorded in May of 1963 in Book 2170, Pages 174 to 175 (Exhibit A.10) that describes Tax Lot 100 in the same 0.43-acre configuration that it is in today. The property was zoned SR in 1963 and as noted above, the SR zone required a 20,000 square foot minimum lot size if the property was served by public water. When considering the road frontage in adjacent to Tax Lot 100 that would be given back to the property if the road were ever vacated, the property would be over 20,000 square feet in size. Since the property is served by the Pleasant Valley Water District it would have met the minimum lot size of the zone. The property also had road frontage and access to a public road as required by the zone. In 1963 there were no partition requirements for the creation of 3 or fewer parcels within a calendar year. As such, the subject property met the zoning and land division rules in place at the time it was put into its current configuration. The 0.43-acre property was lawfully created.

- F. Aggregation of Tax Lots 600 and 100 and the June 1980 Letter From Multnomah County:** Tax Lots 600 and 100 are adjacent to each other and according to Assessment and Taxation records both were in common ownership (owned by Elizabeth Jacoby) on February 20, 1990. Under the current EFU code the two properties would be considered aggregated for Lot of Record Purposes [MCC 36.2675(A)(2)].

The applicant submitted a letter dated June 27, 1980 (Exhibit A.3) to Mr. and Mrs. Daryl Lundbom from Larry Epstein, Manager of the Division of Planning and Development, Land Development Section. The letter was a response to a telephone call between the Lundbom's and Mr. Epstein regarding new code language adopted on January 31, 1980 found in Ordinance 100. The language was the precursor to today's EFU zone that contains the aggregation language in MCC 36.2675.

The planning manager in 1980 reviewed the Lundbom properties, which are the same properties subject to this application for a Lot of Record Determination. The Planning Director wrote that if the subject properties were not contiguous and/or in separate ownership, they would each be considered separately conveyable lots of record. The Planning Director also noted that the County would interpret common ownership as exact, perfect ownership. This letter is important because under today's zoning code, Tax Lots 600 and 100 are aggregated and must be sold together to keep the Lot of Record intact - contrary to the message and interpretation of the June 1980 letter. So for the purposes of Tax Lots 600 and 100, the question becomes: Was the June 1980 letter a final land use decision that binds Land Use Planning to recognize each property as a separately conveyable Lot of Record?

A "land use decision" is any final decision or determination made by a local government that concerns the adoption, amendment or application of discretionary land use standards. A "Final" land use decision must be determinative or conclusory, come from a person with apparent authority to issue binding decisions, and issue from a point in the process from which final decisions can be issued. With respect to the June 1980 letter, the Planning Manager (to the best of staffs knowledge the Planning Manager was equivalent to the Planning Director today) made a land use decision because, pursuant to presumed authority, he interpreted the code and found that the subject properties met the definition of Lot of Record in the general zoning code and the Exclusive Farm Use code as defined at the time. Being as the letter was issued after review and analysis of the facts, it was an appropriate time to issue the letter. Based on this analysis, the letter was a final land use decision.

G. Is the county bound to the conclusions of the final land use decision issued by the Planning Director in 1980? Local jurisdictions are required to honor a final land use decision administering current zoning codes (Oregon's goal post statute – ORS 215.427). The letter from the Planning Director at the time determined the properties subject to the letter, and this land use application, were Lots of Record. Being a Lot of Record in the EFU zone both at the time the letter was written and today has two distinctive parts:

- Lawful Creation
- Aggregation

The County's lawful creation requirements through the Lot of Record code provisions have changed little, if any, over the years. The general definition of a lawfully created parcel being that the property met the zoning and land division requirements in place at the time of the parcel creation. With respect to the June 1980 letter, the County is bound to acknowledge that each property identified in the letter is a lawfully created parcel since the definition of a lawfully created parcel has not changed.

Aggregation requirements of the EFU zone have changed over the years. As is clear from the letter, the original EFU aggregation language of Ordinance 100 in 1980 was not strict. The Planning Director wrote:

"As a general rule, we intend to interpret the aggregation requirements of the proposed amendments very narrowly. Only where there is a perfect unity of ownership interests do we expect to invoke aggregation."

The EFU aggregation requirement adopted in January 1980 said:

"Parcels of land which are contiguous and in which greater than possessory interests are held by the same person, partnership or business entity, shall be aggregated to comply as nearly as possible with the area of front lot line minimums of this district..."

However, on February 20, 1990 the County adopted Ordinance 643 which added the definition of *same ownership* to the code and modified the administration of aggregation from that point on. The new language stated:

"Same ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common."

The current code defines same ownership even more broadly:

"Greater than possessory ownership held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control. For the purposes of this subsection, the seller of a property by sales contract shall be considered to not have possessory interest."

The change in the code in 1990 ended the interpretation and general practice of the County stated in the 1980 letter of requiring a perfect unity in ownership for aggregation purposes. Because there was a change in the code and not simply a change of interpretation or administration, the County is not bound to the interpretation of the 1980 letter for the purposes of aggregation requirements and is fact obligated to administer the current code.

The properties are subject to the current EFU code. As a result, staff finds that Tax Lots 600 and 100 were in common ownership on February 20, 1990 and therefore together form one lot of record that must be conveyed together to keep the lot of record intact.

Tax Lots 600 and 100 form one lot of record.

4.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary to demonstrate that all the subject properties were lawfully created parcels. Properties known as Tax Lots 400, 500, 700 and 1000 are each standalone, separately conveyable, Lots of Record in the Exclusive Farm Use zone. Tax Lots 600 and 100 together form one lot of record and must be conveyed together to keep the lot of record intact.

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 T2-2013-3052 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits
A.1	1	General Application Form
A.2	1	Applicant’s August 29, 2013 Narrative
A.3	2	Copy of June 27, 1980 Letter From Larry Epstein, Manager for Land Use Planning, to Mr. and Mrs. Daryl Lundbom.
A.4	1	Assessment and Taxation Parcel Card for #R944170330
A.5	2	Deed Recorded in Book 174, Pages 183 and 184 Recorded May 18, 1932
A.6	2	Deed Recorded in Book 610, Pages 625 and 626
A.7	2	Record of Contract Sale Recorded in Book 1416, Pages 829 and 830 Conveying Subject Property to Paul Lundbom
A.8	3	Deed Recorded in Book 2644, Pages 789 and 790 Fulfilling Contract of Sale in 1980
A.9	3	Applicant’s Copy of Notes for Pre-Filing Conference 2011-2012
A.10		Chain of Title for Tax Lot 100
A.11		Chain of Title for Tax Lot 400
A.12		Chain of Title for Tax Lot 600
A.13		Chain of Title for Tax Lot 700
‘B’	#	Staff Exhibits
B.1	2	A&T Property Information

B.2	1	September 27, 2013 Complete Letter
B.3	3	Email Confirming Application is for Tax Lot 500 (#R994170330) Only
B.4	3	October 23, 2013 Opportunity to Comment and Mailing List
B.5	1	1989 Tax Lot Map With Listed Ownership per Assessment and taxation Records as of October 1990
B.6	1	Current Tax Lot Map with Alternative Tax Lot Numbers Listed
B.7	4	December 2, 2013 Modified Opportunity to Comment and Mailing List
B.8	6	Copy of Notice of Decision for PRE 0-7
B.9	1	Contract of Sale Recorded in Book 1416, Page 824 on January 30, 1980 for Old Tax Lot 32
B.10	2	Contract of Sale Recorded in Book 1416, Pages 824-825 on January 30, 1980 for Old Tax Lot 25
B.11	2	Contract of Sale Recorded in Book 1416, Page 827-828 on January 30, 1980 for Old Tax Lot 52
B.12	2	Contract of Sale Recorded in Book 1416, Page 829-830 on January 30, 1980 for Old Tax Lot 33
B.13	2	Contract of Sale Recorded in Book 1416, Page 831-832 on January 30, 1980 for Old Tax Lot 23
B.14	2	Deed Recorded in Book 1214, Page 781-782 on October 14, 1977 for Old Tax Lot 88
'C'	#	Comments Received
C.1	1	Email From Michael Haight