

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

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

Case File: T2-2014-3293

Application

Request: Lot of Record Determination

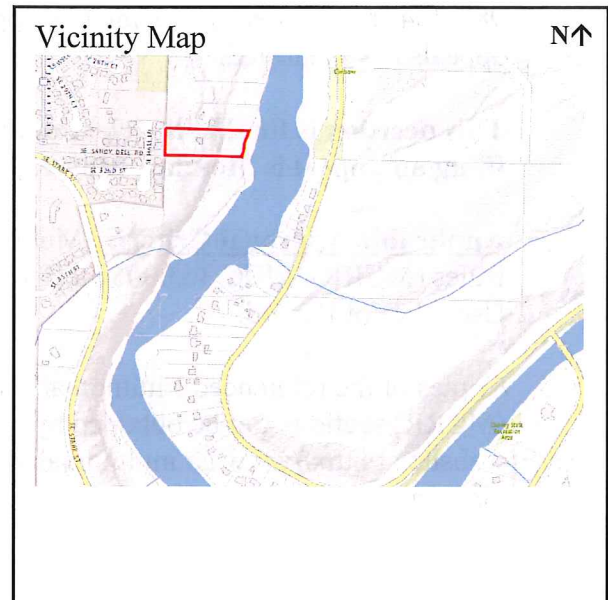
Location: 410 SE Sandy Dell Road, Troutdale
Tax Lot 1600, Section 31CC
Township 1 North, Range 4 East, W.M.
Tax Account #R944310350

Applicant: Christine McKelvey

Owner: Penelope Aronson

Base Zone: Commercial Forest Use

Overlays: Significant Environmental Concern for
wildlife habitat (SEC-h) and water
resources (SEC-wr)



Summary: The applicant is requesting a determination that Tax Lot R944310350 is a Lot of Record pursuant to Multnomah County Code (MCC) 36.2075.

Determination: The subject property is a Lot of Record.

Unless appealed, this decision is effective Monday, May 12, 2014, at 4:00 PM.

Issued by:

By: 
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Monday, April 28, 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 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 Monday, May 12, 2014 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 36.0005 Definitions – Lot of Record, MCC 36.2075 Commercial Forest Use – 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>.

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 R944310350 is a Lot of Record pursuant to the Commercial Forest Use (CFU) zone.

2.00 Property Description & History:

Staff: The subject tax lot currently is occupied by a single family dwelling originally constructed in 1930. In addition, a small 80 square foot shed is listed on the Assessment and Taxation (A&T) records for the property. A&T records indicate that the property is 2.56 acres in size (Exhibit B.1).

Multnomah County established interim zoning by 1955 and adopted area-specific zones by August 1958. From 1958 until October 5, 1977, the property was zoned F-2 (Agricultural Districts). The original lot size for the F-2 district was two acre. In December 1975, the minimum lot size became variable ranging from 2 acres to 38 acres. On October 6, 1977, the property and area was rezoned Multiple Use Forest – 20 (MUF-20). The area was rezoned again to Multiple Use Forest - 19 (MUF-19) in August 1980. All MUF zoned properties were rezoned at the direction of the State to Commercial Forest Use (CFU) on January 7, 1993.

Zone	Min. Lot Size
F-2	2 acres (until 12/1975)
F-2	2 – 38 acres from 12/1975 to 10/5/1977
MUF-20	20 acres
MUF-19	19 acres
CFU	80 acres

3.00 Commercial Forest Use Criteria:

3.01 MCC 36.0005 DEFINITIONS.

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....

Staff: The subject property was created in 1962 when the 1.18 acre parcel known as R944310600 was created by deed (Exhibit A.7). The zoning at the time was F-2 which had a 2 acre minimum lot size from 1958 to December 1975. In 1962, the F-2 district did not have road frontage requirements. The creation of the subject property in 1962 met the zoning ordinance at that time.

The subject property was created with the recordation of a deed with a metes and bounds description in 1962 (Exhibit A.7). In 1962, the property owner divided off one parcel from the subject property. The division satisfied all applicable land division laws at that time. The subject property known as R944310350 was created in compliance with the zoning and land division rules in place at the time.

The subject property is not within an acknowledged unincorporated community nor dissected by a community boundary.

3.02 MCC 36.2075 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

par-cels 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.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

* * *

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) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) 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, F-2 minimum lot size increased, Ord. 115 & 116;

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

(4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

(5) February 20, 1990, Lot of Record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(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 36.2073, 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: The subject property known as R944310350 is currently assessed for 2.56 acres and was created by a metes and bounds description (Exhibit B.1 & A.7). No plat has been recorded for its creation. The adjacent tax lot to the south, known as R994060080, is zoned Rural Residential and is not subject to the aggregation requirement contained in (A)(2) above. The property to the east is the Sandy River which is Waters-of-the-State and has been owned by Oregon since statehood in 1859. Properties to the west are within the City of Troutdale. The subject property is adjacent to only one tax lot zoned Commercial Forest Use (R944310600). In 1990, R944310600 was owned by Shirley Turner. At that time, the subject parcel was owned by Lynda Nestelle. No adjacent properties were required to be aggregated with the subject property. The applicable code section of this property is (A)(1). The creation of the subject property was discussed in Section 3.01 above.

The property, known as R944310350, is a Lot of Record

4.00 Conclusion

Based on the findings and other information provided above, the subject property is a Lot of Record in the Commercial Forest Use zone.

5.00 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 T2-2014-3293 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	1.30.2014
A.2	14	Narrative	1.30.2014
A.3	1	Exhibit A - A&T Parcel Record Card for 1N4E31CC – 01600 (R94310350)	1.30.2014
A.4	1	Exhibit B – SZM 3059 showing the property zoned F-2	1.30.2014
A.5	2	Exhibit C – Building Cards for a 34' x 44' utility building on 1N4E31 Tax Lot '35'	1.30.2014
A.6	2	Exhibit D – (1) Deed recorded on November 25, 1959 in Book	1.30.2014

		1985, Page 310 (2) Description Recorded in 1987 in Book 2027, Page 976	
A.7	2	Exhibit E – Warranty Deed Recorded on April 16, 1963 in Book 2163, Page 221 & 222	1.30.2014
A.8	36	Exhibit F – (1) Fidelity National Title Company of Oregon Preliminary Report – 8 pages (2) Statutory Warranty Deed recorded on 9.28.2001 in Book 2001-154000 – 2 pages (3) DR323612 signed 12.12.1921 recorded in 241 – 1 page (4) Transmission Line Easement signed 6.29.1929 – 2 pages (5) Warranty Deed recorded on 10.31.1952 in Book 1567, Page 87 & 88 – 2 pages (6) Right of Way Agreement recorded on 6.13.1957 in Book 1847, Page 339 and 2 Certificate of Water Rights – 1 page (7) Right-of-Way Agreement recorded on 6.13.1957 in Book 1847, Page 339 – 1 page (8) Easement recorded on 10.12.2011 in Book 2001-162239 – 8 pages (9) Easement recorded on 6.14.2001 in Book 2001-088682 – 5 pages (10) Access Easement Agreement recorded on 6.01.2007 in Book 2007-097934 – 6 pages	1.30.2014
A.9	3	Exhibit G – Title of Navigability in Oregon	1.30.2014
A.10	2	Exhibit H – Sandy River Ownership	1.30.2014
A.11	24	Exhibit I – Stoel Rives paper on the Navigability of the Sandy River	1.30.2014
A.12	1	Exhibit J – Tax Map used for a Title Company document	1.30.2014
A.13	1	Exhibit K – Survey of Property dated 10.17.1955	1.30.2014
A.14	1	Exhibit L – Copy of General Application Form	1.30.2014
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N4E31CC - 01600	1.30.2014
B.2*	1	A&T Tax Lot Map with Property Highlighted	4.28.2014
'C'	#	Administration & Procedures	Date
C.1	1	Application Deemed Complete on Day of Submittal by Applicant	1.30.2014
C.2	1	Complete Letter (Day 1)	1.30.2014
C.3	5	Opportunity to Comment	2.12.2014
C.4	7	Administrative Decision	4.28.2014