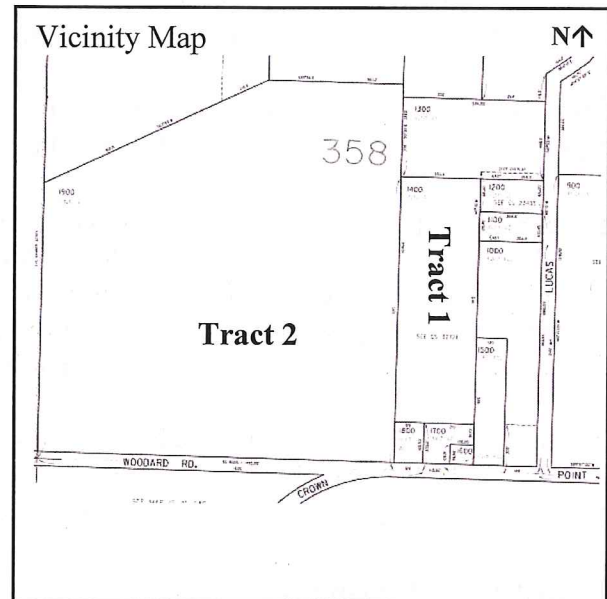


NOTICE OF DECISION

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

Case File: T2-2014-3699
Permit: Property Line Adjustment
Location:
Tract #1 31825 E. Hist. Columbia River Hwy
Tax Lot 1400, Section 32
Township 1N, Range 2E, W.M.
Tax Account #R944320170
Tract #2 31125 E. Woodard Road
Tax Lot 1900, Section 32
Township 1N, Range 4E, W.M.
Tax Account #R944320020
Banner AC, Lot 65
Tax Lot 1800, Section 32
Township 1N, Range 2E, W.M.
Tax Account #R053507160



Applicant: Terry Cook
Tract #1 Property Owner: Terry Cook
Tract #2 Property Owner: Berney Farm LLC

Base Zone: EFU (Exclusive Farm Use)

Overlays: n/a

Summary: Applicant is requesting an equal area property line adjustment between Tract #1 and Tract #2 listed above.

Decision: Approved with Conditions

Unless appealed, this decision is effective Thursday, August 27, 2015, at 4:00 PM.

Issued by:

By: 
Lisa Estrin, Planner

For: Adam Barber- Interim Planning
Director

Date: Thursday, August 13, 2015

T2-2014-3699

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 503-988-0167 or lisa.m.estrin@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 Thursday, August 27, 2015 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 35.2020 Allowed Uses, MCC 35.2625 Review Uses, MCC 35.2660 Dimensional Requirements, MCC 35.2670 Lot Line Adjustment, MCC 35.2675 Lot of Record, MCC 35.2690 Access, 35.7790 Property Line Adjustment, 35.0560 Code Compliance and Applications, MCRR 40.000 Access to County Roads, MCRR 5.000 Transportation Impacts, and MCRR 6.000 Improvement Requirements.

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>.

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. 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 years from the date the decision is final pursuant to MCC 37.0690(A) as applicable. The applicant may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for extension must be submitted prior to the expiration of the approval period.
3. The applicant shall arrange a code compliance site inspection to verify that there is only one dwelling unit on Tract #1 prior to recording the property line adjustment with Multnomah County. If more than one dwelling unit exists, staff will not be able to sign off on the recording of the property line adjustment until the violation is resolved.
4. The applicant shall demonstrate the deed restriction regarding the prohibition of accessory structures for residential uses required by Permit T2-06-19 has been recorded. If the deed restriction has not been recorded, it must be recorded prior to recording the lot line adjustment with Multnomah County [MCC MCC 35.2620(O)(3)] .
5. The applicant and their surveyor shall complete the procedures as described in the County's Handout "Processing and Finishing of Property Line Adjustments, Section (a). [MCC 35.7790].

6. After receiving approval from Land Use Planning staff of the written language for the new legal descriptions and County Surveyor's approval of the new survey, new deeds shall be filed with County Records describing the new metes-and-bounds description of each reconfigured parcel. The transferred property areas shall not exist as separate tax lots or parcels. [MCC 35.7790(A)].
7. No additional lot or parcel shall be created from any parcel by the completion of the property line adjustment. [MCC 35.7790(A)].

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 proposing an equal area adjustment between Tracts # 1 and # 2. Tracts 1 and 2 are identified on the front page of this Notice of Decision.

2.00 Property Description & History:

Staff: Tract # 1 is a 7.70-acre property that contains an existing single-family dwelling, detached garage, a barn and dairy barn. [Exhibit A.10].

Tract # 2 consists of two parcels that total 51.21 acres that contains an existing single-family dwelling, detached garage, barn and shed. [Exhibit A.10].

3.00 Exclusive Farm Use Criteria:

3.01 § 35.2625 REVIEW USES

(J) The proposed Lot Line Adjustment is subject to review pursuant to the provisions of MCC 35.2670, which are addressed below.

Staff: The applicant has applied for a Lot Line Adjustment.

3.02 § 35.2660 DIMENSIONAL REQUIREMENTS

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Minimum Front Lot Line Length – 50 feet.

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: Tract #1 currently is occupied by an existing single-family dwelling, detached garage and agricultural accessory structures (barn and dairy barn). (Exhibit A.10). Tract #1 is not adjacent to a public right-of-way. The existing structures meet all of the above yard distances. All structures are setback ten feet or more from the side property lines and roughly 790 feet or more from the rear property line. Technically, the property does not have a front lot line as it is not adjacent to a street or accessway. All structures are setback 80 feet or more from the south property line.

Tract #2 is currently occupied by an existing single-family dwelling, detached garage, and two farm buildings (barn and shed). (Exhibit A.10). The buildings exist on Tax Lot 1900, 32N1W14 (R944320020). There are no existing structures on Tax Lot 1800, 32N1W14 (R053507160). These buildings are approximately 50 feet or more from the nearest property line for the Parcel. *These criteria have been met.*

3.03 § 35.2670 LOT LINE ADJUSTMENT

(A) Pursuant to the applicable provisions in MCC 35.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

(1) All dwellings that were situated on the same lot prior to the adjustments must

remain together on the reconfigured lot; and

Staff: The existing dwelling on Tract # 1 will remain on reconfigured Tract # 1 and the existing dwelling on Tract # 2 will remain on reconfigured Tract # 2. [Exhibit A.10]. *This criterion is met.*

(2) The following dimensional and access requirements are met:

(a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements; and

Staff: All structures on the reconfigured lots will continue to comply with minimum yard setback requirements.

The proposed lot line adjustment will increase the side yard setback for the residence on Tract # 1 from ten feet to fifteen feet. All other structures on Tract # 1 are located 120 feet or more from the proposed adjusted boundary. [Exhibit A.10].

The adjustment will reduce the side yard setback for the residence on Tract # 2 from 1,295 feet to 1,290 feet. The side yard setback for the detached garage on Tract # 2 will be reduced from 1,235 feet to 1,230 feet. All other structures on Tract # 2 are located 185 feet or more from the boundary proposed adjusted boundary. [Exhibit A.10].

The lot line adjustment will not alter the existing front lot line length of either Tract. [Exhibit A.10]. *This criterion is met.*

(b) If the properties abut a street, the required access requirements of MCC 35.2690 are met after the relocation of the common property line; and

Staff: The proposed lot line adjustment will not alter the existing accesses. Tract # 2 has, and will maintain, roughly 1,693.95 feet of frontage on E. Woodard and E. Historic Columbia River Highway. As noted above, Tract # 1 does not have a front lot line as it is not adjacent to a street or accessway. The proposed lot line adjustment will not alter the existing access for this Lot of Record. [Exhibit A.10]. *This criterion is met.*

(3) The reconfigured lot areas will each:

(a) Be a minimum of 80 acres, or

(b) Retain the same lot area that existed prior to the exchange.

Staff: Both Tracts will retain the same lot area that existed prior to the exchange. The applicant proposes to move the southern 456.0 feet of the western boundary of Tract # 1 five feet to the west, increasing the area of Tract # 1 by 2,280 square feet, and reducing the area of Tract # 2 by the same amount. The applicant further proposes to move the northern 558.9 feet of the western boundary of Tract # 1 4.08 feet to the east, reducing the area of Tract # 1 by 2,280 square feet, and increasing the area of Tract # 2 by the same amount. *This criterion is met.*

3.04 § 35.2675 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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.

3. [This section of the code provides drawings illustrating the aggregation requirement].

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, SRC, R-10, GGA-40), 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, 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, reenacted by Ord. 997.

(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 35.2690 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.

§ 34.0005 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 34.7785. 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 district.)

Staff: Tract # 1 (R944320170) is a legal lot of record. It was lawfully created on January 1, 1966 from a deed recorded in Book 455 Page 859. [Exhibit A.4]. The 7.7-acre lot exceeded the two-acre minimum lot size required by the F-1 zoning in effect at the time and there were no lot frontage or road frontage requirements at the time. The owners of Tract # 1 did not own any adjacent EFU zoned parcels on February 20, 1990.

Tract # 2 (R944320020 and R053507160) is also a legal lot of record. Tax Lot ‘2’ (R944320020) is a remainder parcel created when the 18.36-acre Tax Lot ‘18’ (R944320180) and the 8.21-acre Tax Lot ‘22’ (R944320220) were divided off in 1966 and 1968 respectively. These lots complied with the two-acre minimum lot size required by the F-2 zoning in effect at the time and there were no lot frontage or road frontage requirements at the time. Tax Lot ‘18’ (R944320180) was created by warranty deed dated July 11, 1966 and recorded July 15, 1966 in Book 516 Page 559. [Exhibit A.6]. Tax Lot ‘22’ (R944320220) was created from by a contract of sale dated July 1, 1968. [Exhibit A.11]. These transfers created the remainder lot identified as Tax Lot ‘2’ (R944320020). The 48.81-acre remainder lot exceeded the two-acre minimum lot size required by the F-2 zoning in effect at the time and there were no lot frontage or road frontage requirements at the time.

Tax Lots ‘1’ and ‘2’ are contiguous and both lots were in the same ownership on February 20,

1990. [Exhibits A.8 and A.9]. Tax Lot '1' is less than 19-acres (2.40 acres). Therefore, pursuant to MCC 35.2675(A)(2), Tax Lots '1' and '2' combined constitute a single Lot of Record.

3.05 § 35.2690 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 35.2675(C).

Staff: Tract # 2 abuts a public street, E Woodard Road. Tract # 1 is a Lot of Record created prior to the lot frontage requirements. Therefore access complies with MCC § 35.2690. *This criterion is met.*

4.00 Land Division Code Criteria

4.01 § 35.7790 PROPERTY LINE ADJUSTMENT

A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

(A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and

Staff: The property line adjustment begins with two parcels and will end with two parcels. No additional parcels will be created (Exhibit A.10). In addition, a condition of approval has been included to ensure that the property line adjustment is completed properly. *As conditioned and as proposed, the criterion will be met.*

(B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and

Staff: The owners of the properties involved in the proposed property line adjustment both consented in writing to the proposed adjustment. Both parties signed the property line adjustment application. Terrance W. Cook owns Tract 1. Mr. Cook signed the application. Berney Farm LLC owns Tract 2. LLC members Barbara M. Goetz, Christian May, Sarah Johnson Edward A. Berney Jr., Karen E. Berney and Michael E. Goetz all signed the application. [Exhibit A.1]. *This criterion is met.*

(C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and

Staff: The adjusted properties meet the approval criteria for a property line adjustment in the EFU district, based on the findings in Section 35.2670 above. *This criterion is met.*

(D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.

Staff: The applicant has submitted the required information and used the appropriate forms for the proposed adjustment. *This criterion is met.*

5.00 Code Compliance

5.01 § 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.

Staff: There appears to be an existing land use violation on Tract # 1. The following Conditions of Approval for case T2-06-19 was adopted for Tract 1:

“Upon completion/occupancy of the dwelling or 1 year from the issuance of this permit (April 21, 2006), whichever comes first, this permit will expire, and the property owners shall decommission all kitchen facilities within the garage/nursery, and cease using the structure as living quarters. [MCC 35.0510]”

“After the temporary use has been decommissioned, and before building permit sign-off, the owner/applicant shall sign and record a covenant that require the current and future property owners to maintain the structure as an accessory structure. [MCC 36.2855(H)]”

Based on an online Realtor video, one or more accessory structures on Tract # 1 appear to have been converted to dwelling units without land use review and approval as one or more of the accessory structures on Tract # 1 include kitchen and bathroom facilities. Accessory structures may include either kitchen or bathroom facilities, not both. MCC 35.2620(O)(3). This section further requires the property owner record a deed restriction with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling. MCC 35.2620(O)(3). A condition has been adopted requiring the applicant demonstrate the deed restriction has been recorded as required by Permit T2-06-19. If the deed restriction has not been recorded, it must be recorded prior to recording the lot line adjustment with Multnomah County. In addition, the conversion of a farm building to an accessory building requires land use authorization and at times building permits.

(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

Staff: A condition of approval requiring the property owner for Tract #1 to arrange a code compliance site inspection to verify that there is only one dwelling on the property and, if more than one dwelling unit exists, requiring correction of the situation. A condition of approval requiring a deed restriction is also required if the accessory structure(s) have either a kitchen or bath facilities. *As conditioned, the criterion will be met.*

(2) It is necessary to protect public safety; or

Staff: Approval of the proposed property line adjustment is not necessary to protect public safety as defined by MCC 37.560(B).

(3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: The proposed property line adjustment is not related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Property Line Adjustment in the EFU zone. This approval is subject to the conditions of approval established in this report.

7.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2014-3699 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Property Line Adjustment Application	9/24/2014
A.2	1	Tentative Map dated 8/6/14	9/24/2014
A.3	3	Certification of Onsite Sewage Disposal Form & Attached Documents	9/24/2014
A.4	2	Parcel 1 Deed recorded on 1/1/1966 in Book 455, Pages 859 [Cook Property – Zoning: F-2]	9/24/2014
A.5	2	Building Permit Fee Receipt for Single Family Dwelling Addition for the Property known as 31825 E. Historic Columbia River Hwy dated 3/07/2006	9/24/2014
A.6	3	Parcel 2 Deed recorded on 7/15/1966 in Book 516, Pages 559, 560 & 561 [breaks off original Tax Lot 400, 1N4E32d]	9/24/2014
A.7	2	Bargain and Sale Deed signed 10/12/1983 recorded on 6/5/1986 in Book 1911, Pages 947 & 948 [Describes Tax Lot 400, 1N4E32d]	9/24/2014
A.8	1	Warranty Deed dated 8/6/1979 recorded on 9/8/1988 in Book 2135, Page 1430 [Describes 300, 500 & 1900 combined]	9/24/2014
A.9	1	Warranty Deed signed 12/9/1988 recorded on 12/16/1988 in Book 2163, Page 2000 [Deed to correct legal description recorded in Exhibit A.7. Describes 300, 500 & 1900]	9/24/2014
A.10	1	“Exhibit Map for Berney Farm L.L.C.”	2/26/2015
A.11	4	Contract of sale dated July 1968	(Attached to Burkholder letter)
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N4E32D – 01400	9/24/2014
B.2	2	A&T Property Information for 1N4E32D – 01900	9/24/2014
B.3	2	A&T Property Information for 1N4E32D – 01400	9/24/2014
B.4	1	Warranty Deed record on 12/1/ 1972 in Book 897, Page 941 [West 193.6 ft of the original tax lot 500 - Zoning: F-2]. And	

B.5		Warranty Deed recorded on 1/9/1981 in Book 1495, Page 872 – 874 [Describes Original Tax Lot 500 – Zoning: EFU, Formerly MUA-20]	
B.6		Bargain & Sale Deed recorded on 4/1/1987 in Book 1992, Page 646 & 647 [Describes original Tax Lot 400 & original Tax Lot 500, 1N4E32D – Zoning: EFU]	
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	10/24/2014
C.2	2	Applicant's Acceptance of 180 Day Clock	11/17/2014 (Cook) &11/15/2014 (Berney Farm)
C.3	1	Complete Letter (Day 1)	5/7/2015
C.4		Opportunity to Comment	5/8/2015
C.5	11	Administrative Decision	8/6/2015

330.00' FEET

10' 0"

