

1600 SE 190th Ave, Portland OR 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: T2-2017-7285

Location: Tax Lot 300, Section 19D
Township 1 South, Range 4 East, W.M.
Tax Account #R197100110

And

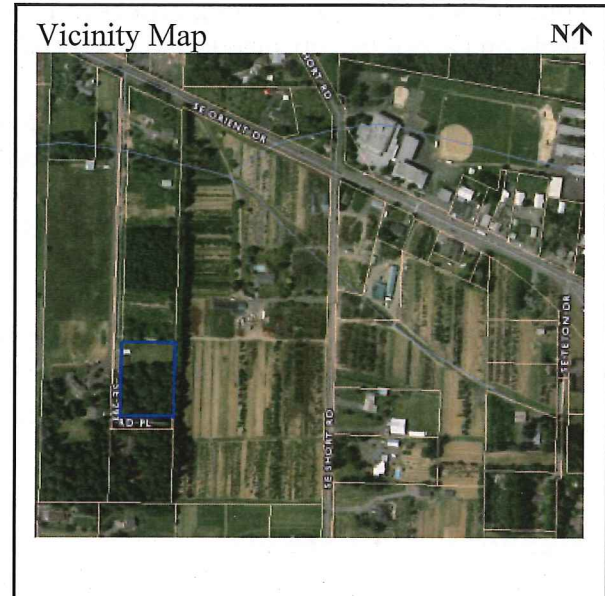
Tax Lot 500, Section 19D
Township 1 South, Range 4 East, W.M.
Tax Account #R197100350

Applicants: Cheryl Ingram

Owners: Cheryl and Dennis Ingram

Base Zone: Exclusive Farm Use (EFU)

Overlays: None



Summary: Applicant is requesting a Planning Director's interpretation per Multnomah County Code (MCC) 37.0740 that the subject properties are each a Lot of Record.

Decision: Lot 2, Dar-Mil Estates (Tax Lot 300) and Lot 1, Dar-Mil Estates (Tax Lot 500) are each a Lot of Record

Unless appealed, this decision is effective September 1, 2017, at 4:00 PM.

Issued by:



Michael Cerbone, AICP
Planning Director

Date: Friday, August 18, 2017

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 Michael Cerbone, Planning Director at 503-988-3043.

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 Friday, September 1, 2017 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC) MCC 36.0005, MCC 36.2675, MCC 37.0560, MCC 37.0740

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at multco.us/landuse/zoning-codes under the link Ch.36: West of Sandy River Rural Plan Area.

Conditions of Decision

The conditions listed are necessary to ensure that approval criteria for this land use decision are satisfied.

1. This decision is based on the submitted written narrative(s) and application materials.
2. Prior to land use approval for any building permits, the property owner shall obtain a demolition permit to demolish the non-permitted accessory building located on Lot 2, Dar-Mil Estates (Tax Lot 300). All materials from the structure shall be removed from the property and disposed of properly. [MCC 37.0560]

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 Property History

Staff: The subject properties are zoned Exclusive Farm Use (EFU). Lot 1, Dar-Mil Estates (Tax Lot 500) and Lot 2, Dar-Mil Estates (Tax Lot 300) were created via a three lot subdivision recorded in 1973. The subdivision (Dar-Mil Estates) was created from a 10-acre parcel that was partitioned into the three lots.

On May 3, 2010 The Oregon Department of Land Conservation and Development (DLCD) issued a Final Order and Home Site Authorization for a Measure 49 claim for Tax Lot 300. DLCD found that no contiguous property was under the same ownership of the claimant and authorized the claimant to establish a dwelling.

In Land Use Case T2-2013-2771, the County approved a proposal to construct a single family dwelling under the previously mentioned Measure 49 approval. The County found that Tax Lot 500 and 300 were contiguous per the County's Exclusive Farm Use Zoning regulations and therefore aggregated to form single Lot of Record.

2.00 Exclusive Farm Use Criteria:

2.01 § 36.0005 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 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.

Staff: Lot 1, Dar-Mil Estates (Tax Lot 500) and Lot 2, Dar-Mil Estates (Tax Lot 300) were created via a three lot subdivision recorded in 1973. The subdivision (Dar-Mil Estates) was created from a 10-acre parcel that was partitioned into the three lots.

Criterion met.

2.02 § 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:

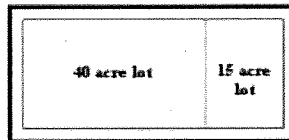
(a) Which were held under the same ownership on February 20, 1990; and

(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.

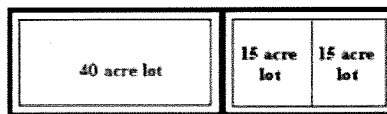
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with 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.

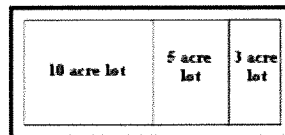
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



Example 1:
One 55 acre Lot of Record



Example 2:
One 40 acre Lot of Record and
one 30 acre Lot of Record



Example 3:
One 18 acre Lot 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) 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: In 2013, through land use case T2-2013-2771, the County found that Tax Lot 500 and 300 aggregate to form a single Lot of Record. The County amends that finding through this current land use decision and has determined the following:

Property owner Cheryl Ingram filed a Measure 49 claim (E131019) to retain the relief provided in a previous Measure 37 claim for Tax Lot 300. Oregon State Department of Land Conservation and Development (DLCD) subsequently approved the Measure 49 claim included as Exhibit B.2. County staff contacted the DLCD Measure 49 Specialist for guidance in how to interpret the Measure 49 approval. In correspondence included as Exhibit B.3 Sarah Marvin, Measure 49 Specialist confirmed that Tax Lot 500 was determined to be not contiguous, because it was not in “identical ownership” at the time the claim was filed. Ms. Marvin noted that the Oregon Department of Justice interprets the ownership to be different because Dennis Ingram did not have ownership interest in Tax Lot 300. Accordingly, the State in approving the Measure 49 claim did not consider the two lots to be contiguous. Therefore, the M37 waiver

issued by the County and the M49 claim issued by the state intended to ensure that Tax Lot 300 is a lot of record separate from Tax Lot 500.

Criterion met.

3.00 Administration and Procedures

3.01 § 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.

(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.

(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.

Staff: A condition has been added to this decision requiring the removal of a non-permitted accessory building located on Lot 2, Dar-Mil Estates (Tax Lot 500). *Criterion met via a condition included in this decision.*

4.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Lot of Record Determination. Lot 2, Dar-Mil Estates (Tax Lot 300) and Lot 1, Dar-Mil Estates (Tax Lot 500) are determined to each be a Lot of Record. This determination is subject to the conditions of the decision established in this report.

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 T2-2017-7285 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	3/16/2017
A.2	6	Narrative	3/16/2017
A.3	2	Applicant’s Response to Incomplete Letter	4/12/2017
‘B’	#	Staff Exhibits	Date
B.1	4	A&T Property Information	3/16/2017
B.2	8	M49 Approval	8/8/2017
B.3	4	Email from M49 specialist Sarah	12/6/2016
B.4	17	Notice of Decision for Case # T2-2013-2771	8/8/2017
‘C’	#	Administration & Procedures	Date
C.1	4	Incomplete Letter	4/11/2017
C.2	1	Complete Letter (Day 1)	4/26/2017
C.3	2	Opportunity to Comment	4/27/2017
C.4	8	Administrative Decision	8/18/2017