
NOTICE OF DECISION

Case File: T2-2019-11865
Permit: Lot of Record Verification
Applicant(s): Brian Stevens **Owner(s):** Brian and Trisha Stevens
Location: Tax lot north of 33341 SE Carpenter Lane adjacent to SE Dodge Park Blvd.
Tax Lot 900, Section 21DB, Township 1 South, Range 4 East, W.M.
Alternate Account #R994210130 Property ID #R342471
Zoning: Multiple Use Agriculture -20 (MUA-20)
Overlays: None
Proposal Summary: The applicant requests a Lot of Record Verification for the above referenced property. Staff will determine if the current configuration of the subject property satisfies the relevant Lot of Record approval criteria found in Multnomah County Code.

Determination: The subject property (1S4E21DB-00900) is not a Lot of Record in its current configuration.

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, October 4, 2019 at 4:00 pm.

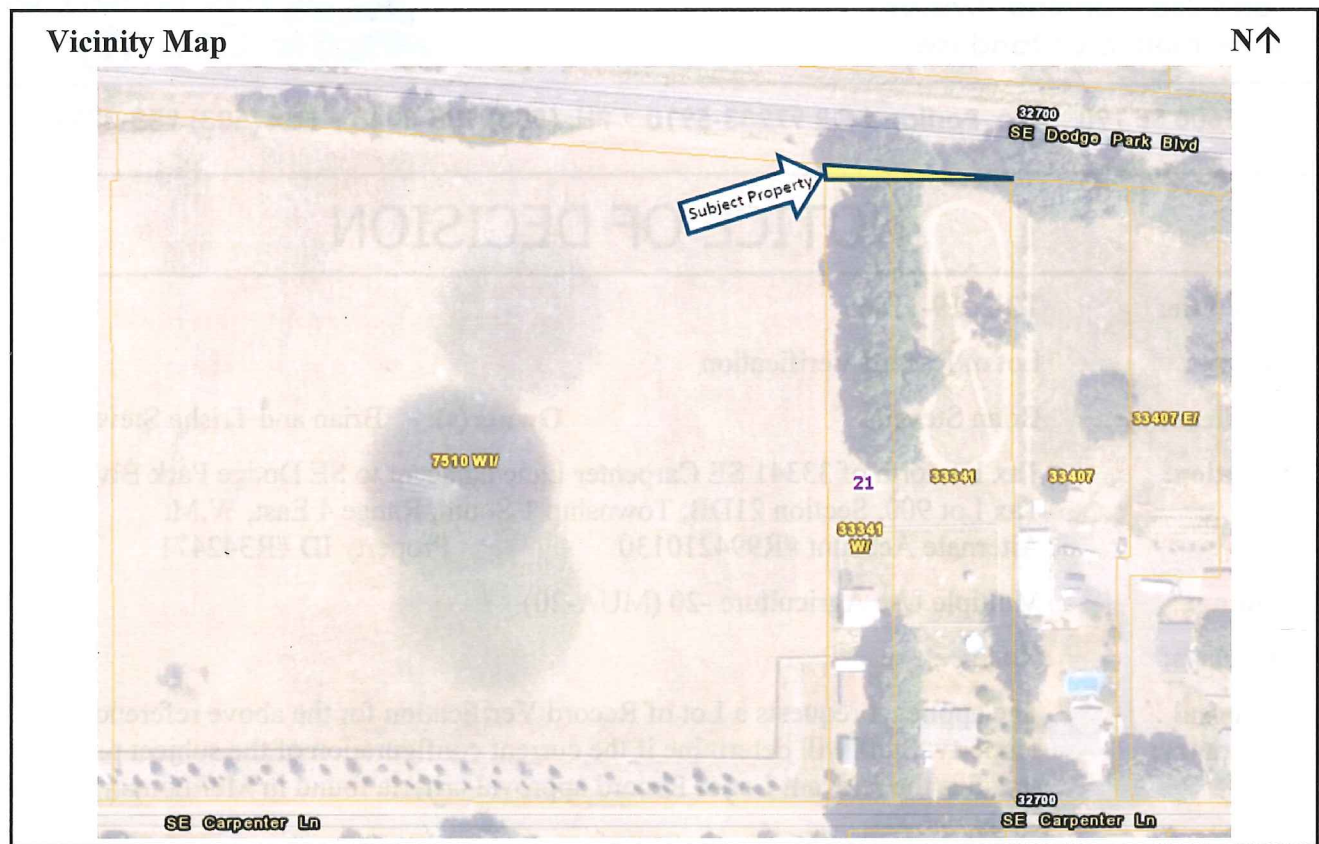
Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Katie Skakel, Staff Planner at 503-988-0213 or at katie.skakel@multco.us

Opportunity to Appeal: 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 office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued By: 
Katie Skakel, Senior Planner

For: Adam Barber,
Interim Planning Director

Date: Friday, September 20, 2019



Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – Multiple Use Agriculture - 20

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at multco.us/landuse/zoning-codes under the link *Chapter 39: Multnomah County Zoning Code*.

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*.

1.0 Project Description:

Staff: The applicant requests a Lot of Record Verification for Tax Lot 900, Section 21DB, Township 1 South, Range 4 East, W.M. (the “subject property”). The subject property is located adjacent to SE Dodge Park Blvd.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot or unit of land involved in the request. The County then verifies that the creation or reconfiguring of the unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. If the unit of land met all the applicable zoning and land division laws in effect at the time, it may be determined to be a Lot of Record.

2.0 Property Description:

Staff: The subject property is located in rural East Multnomah County in the Multiple Use Agriculture – 20 (MUA-20) zone. The subject property is a triangular strip of land and is approximately 0.10 of an acre (4,356 sq. ft.). It is vacant and no address has been assigned to the subject property at this time.

The subject property was created in 1972 when it was divided from a larger parent parcel, and it has not been reconfigured since that time (Exhibit A.6, A.8, and A.10). At the time of its creation, the subject property was zoned Suburban Residential (“SR”) (Exhibit B.3). The SR zone had variable minimum lot sizes ranging from 10,000 – 40,000 sq. ft. The minimum lot size was dependent on the available services in the area (Exhibit B.3 – B.4).

3.0 Administrative Procedures Criteria:

3.1 MCC 39.1515: 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 Zoning 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 Zoning 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: As noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. Therefore, this standard is not applicable. Nonetheless, there are no known compliance issues on the subject property at this time.

4.0 LOT OF RECORD CRITERIA:

4.1 MCC 39.3005: Lot of Record – Generally:

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. 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.)

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

Applicable Zoning Laws

To satisfy all applicable zoning laws at the time of creation, the subject property must have been created in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

The applicant submitted a recorded deed from March 24, 1908 describing an approximately 0.52 of an acre (22,651.2 sq. ft.) property (Exhibit A.3), a portion of which would later be divided off to form the subject property. At the time of recording of the aforementioned deed, zoning regulations were not yet in effect. The applicant also provide a recorded deed from April 27, 1971 (Exhibit A.4) that contains a matching legal description that describes an approximately 22,651 sq. ft. property.

On October 17, 1972, a Warranty Deed was recorded in Book 888, Page 447-448 (Exhibit A.6) which conveyed a portion of the original 22,651 sq. ft. property to the Scenic Fruit Company's property known as tax lot 1S4E21C - 00100. Through recording the aforementioned 1972 deed, the subject property was created at its current size of approximately 4,356 sq. ft. Image #1 below is a graphic created by the applicant that highlights the creation of the approximately 4,356 sq. ft. subject property from the larger 22,651 sq. ft. property in 1972 (Exhibit A.7)

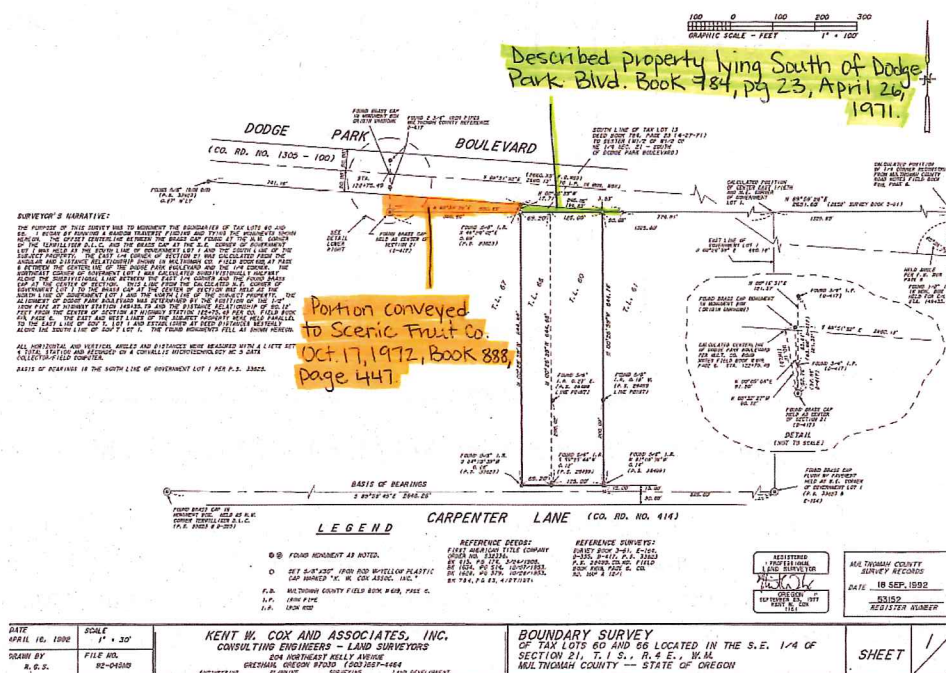


Image #1 – September 18, 1992 Survey (Exhibit A.7)

At the time of recording of the 1972 deed creating the 4,356 sq. ft. subject property, the zoning in the area was Suburban Residential ('SR'). Section 3.1531 of Multnomah County Code provided for variable minimum lot sizes ranging between 10,000 – 40,000 sq. ft. in the SR zone. (Exhibit B.4). The minimum lot size was dependent on the available services in the area. (Exhibit B.3 – B.4). Image #2 below is a graphic from the 1962 Zoning Map for 1S4E21DB showing the area being zoned SR (Exhibit B.3). Staff utilized an orange rectangle to identify the area on the map showing the parent parcel.

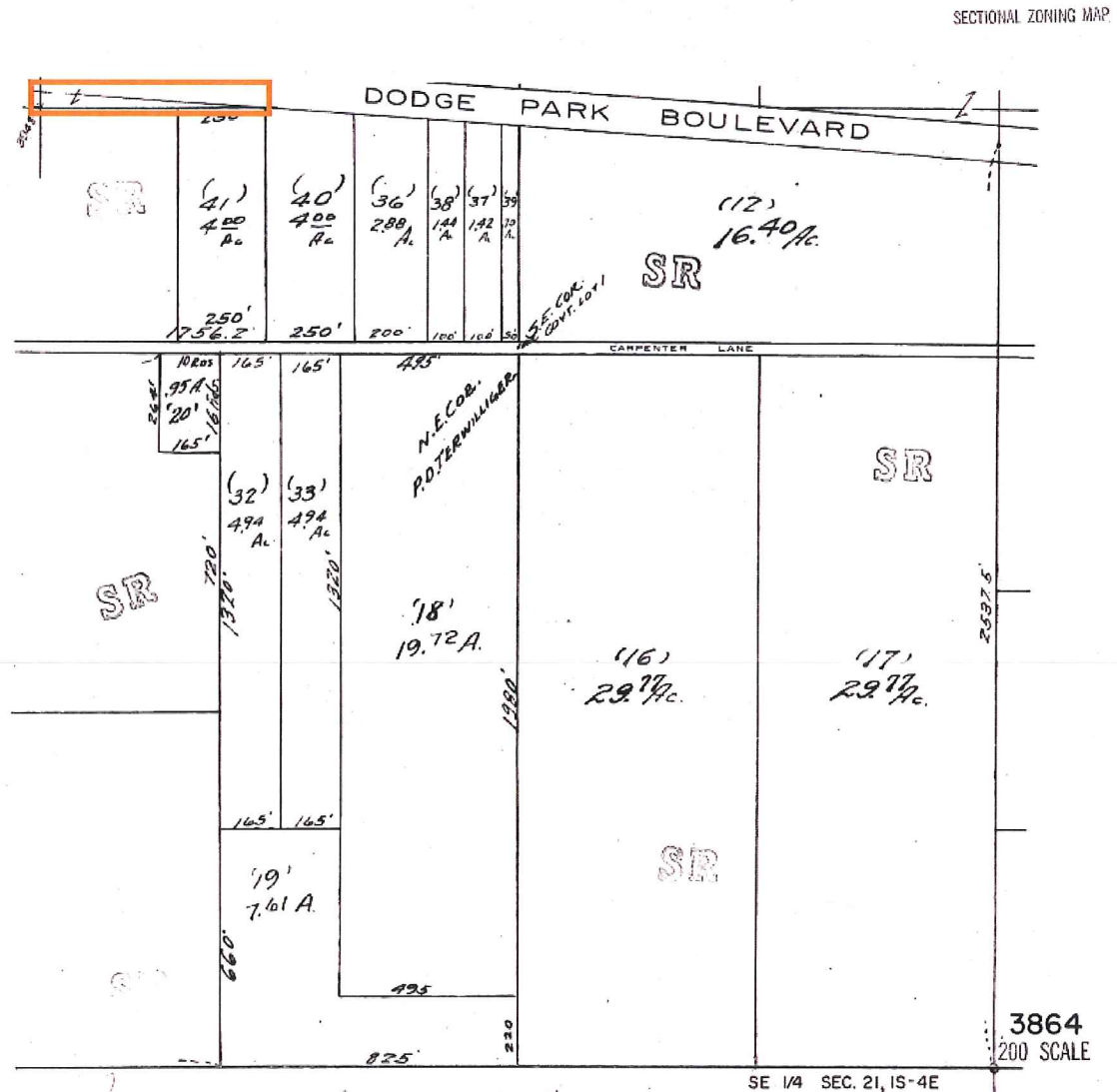


Image #2 – 1962 Zoning Map for 1S4E21DB (Exhibit B.3)

Given the parent property was divided to create the approximately 4,356 sq. ft. subject property, the subject property did not meet the minimum lot size of the SR zone when it was created. To have created a property less than 10,000 sq. ft. in size in accordance with the applicable zoning laws of the SR zone, a district boundary change (zone change) was required. Section 3.1531(b) in the SR zone stated, "Any further reduction in lot sizes shall require a change in district boundary. (Section 8.30). Such change may be considered on the basis of

established character and community facilities in addition to the above.” (Exhibit B.4 and B.6). The applicant did not provide any documentation that a “change in district boundary,” i.e., a zone change, was completed at the time of creation of the subject property in 1972 (Exhibit A.1 – A.8), and planning staff found no evidence in the County records that the property was rezoned from the SR district at that time. At the time of its creation in 1972, the subject property did not meet the minimum lot size and hence did not satisfy all applicable zoning laws at that time.

Applicable Land Division Laws

In 1972, the process to divide a property into two new units of land was to write up new legal descriptions and record a new deed or contract that utilized the new description. The property owner at that time did utilize the correct land division process and satisfied all applicable land division laws at that time (Exhibit A.6).

Based on the information discussed above, the creation of this parcel in 1972 did satisfy all applicable land division laws, but did not satisfy all applicable zoning laws at the time. The subject property therefore does not qualify as a Lot of Record.

4.2 MCC 39.3080: Lot of Record – Multiple Use Agriculture – 20:

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 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, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) 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 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: As stated in Section 4.1 above, the subject property is not a Lot of Record. Therefore, this criterion is not applicable.

- 4.3 (C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, 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.**

Staff: The subject property is vacant and there are no current land use decisions or permits approving a structure on the subject property. Therefore, this criterion is not applicable.

4.4 (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.**

Staff: The subject property was not created by the foreclosure of a security interest or a court decree. The subject property is not an area of land described solely for assessment and taxation purposes. *Criteria met.*

Based upon the findings in 4.1 through 4.4, the approximately 4,356 sq. ft. subject property is not a Lot of Record.

5.0 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 T2-2019-11865 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Application Form	04.17.2019
A.2	3	Applicant Narrative	04.17.2019
A.3	1	Deed Record recorded March 24, 1908	04.17.2019
A.4	1	Warranty Deed recorded on April 27, 1971 in Book 784, Page 23	04.17.2019
A.5	1	Survey no. 53152 recorded on September 18, 1992 with highlights	04.17.2019
A.6	1	Warranty Deed recorded on October 17, 1972 in Book 888, Page 447-448	04.17.2019
A.7	1	Survey no. 53152 recorded on September 18, 1992 with highlights	04.17.2019
A.8	1	Personal Representative’s Deed recorded on May 25, 2000 as Instrument # 2000-072903	04.17.2019
A.9	1	Survey no. 33623 recorded on May 22, 1971	04.17.2019
A.10	1	Bargain and Sale Deed recorded on August 07, 2019 as Instrument no. 2019-081911	08.08.2019

'B'	#	Staff Exhibits	Date
B.1	1	A&T Property Information	04.17.2019
B.2	1	Email from Michael Cerbone (former Planning Director) describing fee waiver.	04.17.2019
B.3	1	1962 Zoning Map for 1S4E21DB	04.17.2019
B.4	6	Suburban Residential (SR) zoning regulations - Zoning Ordinance 100 as amended effective May 21, 1968	04.17.2019
B.5	3	Parcel Record Card for 1S4E21DB -00900	04.17.2019
B.6	11	General Provisions – section 8.0 of Zoning Ordinance 100 as amended effective May 21, 1968	04.17.2019
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	05.15.2019
C.2	1	Applicant Response	06.18.2019
C.3	1	Complete Letter (Day 1)	07.10.2019
C.4	2	Opportunity to Comment	08.29.2019
C.5	8	Administrative Decision	09.19.2019

