

NOTICE OF DECISION


Case File: T2-2019-12426
Permit: Lot of Record Verification
Applicant(s): Michelle Abramson **Owner(s):** Michelle Abramson Living Trust
& Alan Abramson
Location: 33536 SE Hurlburt Rd., Corbett
Tax Lot 300, Section 04DB, Township 1 South, Range 4 East, W.M.
Tax Account #R994041140 Property ID #R341366
Zoning: Exclusive Farm Use (EFU) / Multiple Use Agriculture – 20 (MUA-20)
Overlays: Significant Environmental Concern – streams (SEC-s)
Proposal Summary: The applicant requests a Lot of Record Verification for the subject property. The County will review the creation or reconfiguration of the subject property to verify that the creation or reconfiguration of the unit of land satisfied all applicable zoning and land division laws in effect on the date of its creation or reconfiguration.

Determination: The subject property (1S4E04DB-00300) is 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 Wednesday, October 30, 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 Chris Liu, Staff Planner at 503-988-2964 or at chris.liu@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: 
Chris Liu, Assistant Planner

For: Adam Barber,
Interim Planning Director

Date: Wednesday, October 16, 2019

Instrument Number for Recording
Purposes: #2017-139771

Vicinity Map

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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 39.3070 Lot of Record – Exclusive Farm Use, 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 <http://multco.us/landuse/zoning-codes/> under the link Chapter 39 – Zoning Code.

Conditions of Approval

1. Record pages 1 through 2 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

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 300, Section 04DB, Township 1 South, Range 4 East, W.M. (the “subject property”). The subject property is located adjacent to SE Hurlburt Road and identified as 33536 SE Hurlburt Road.

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 and is primarily zoned Exclusive Farm Use (EFU) zone with the northern 436 feet being zoned Multiple Use Agriculture -20 (MUA-20). The subject property is approximately 12.42 acres and is outside the Urban Growth Boundary and outside the Columbia River Gorge National Scenic Area. County Assessment and Taxation records for the property show a single-family dwelling with built in garage constructed around 1974, 384 sq. ft. deck and a 1,800 sq. ft. outbuilding.

3.0 GENERAL PROVISIONS:

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.

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 real estate contract from January 11, 1973 describing the subject property (Exhibit A.3). Through the recording of the aforementioned contract in 1973, the subject property was created at its current size of approximately 12.42 acres.

At the time of recording of the 1973 deed creating the approximately 12.42 acre subject property, the zoning in the area was 'F-2' (Exhibit B.2). The minimum lot size for the F-2 zone was 2.0 acres. (Exhibit B.3). There was not a minimum front lot line length or other minimum standards in the F-2 zone. Therefore, at the time of creation in 1973, the subject property met the minimum lot size requirements and satisfied all applicable zoning laws at that time.

Applicable Land Division Laws

In 1973, the process to divide a property into 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.3).

Based on the information discussed above, the creation of this parcel in 1973 satisfied all applicable zoning and land division laws at the time.

4.2 MCC 39.3070: Lot of Record – Exclusive Farm Use (EFU)

(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU 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 in Figure 1 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, SRC, BRC, 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.

Staff: The applicant provided a title report from November 1989 obtained prior to the sale of the subject property from the Murray's to the current owner [Abramson's] (Exhibit A.5). The Abramson's have owned the subject property from the date of transfer in 1989 to the present (Exhibit A.2). Per County tax records, the listed property owner in the 1989 tax record is the Murray's and the listed property owner in the 1990 tax record is the Abramson's. The tax records do not show any contiguous parcels or lots owned by the Abramson's as of February 20, 1990. Therefore, the subject property qualifies as a single approximately 12.42 acre parcel .
Criteria met.

- 4.3 (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 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

Staff: The subject property remains in the same configuration as described in the 1973 real estate contract (Exhibit A.3). The EFU zone has a minimum lot size to create a new parcel of 80 acres, a requirement for a 50-ft front lot line and road frontage. The subject parcel has a 50-ft front lot line adjacent to SE Hurlburt Road, so it also meets the access requirement. The subject 12.42 acre parcel is substandard to the minimum lot size, but as allowed in (C) above it may be occupied by any allowed use, review use or condition use subject to other requirements.

- 4.4 (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 parcel was created by the recording of a real estate contract in 1973 which followed the land division process at that time (Exhibit A.3). The subject property was not created by the foreclosure of a security interest or a court decree. The single parcel is not an area of land described solely for assessment and taxation purposes nor is it a mortgage lot.
Criteria met.

4.5 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: While the parcel has less than the minimum lot size for a new parcel in the MUA-20 zone, it is a legally created parcel under finding 4.1 of this land use decision. The subject property may be occupied by any land use permissible under the MUA-20 requirements provided the proposed use does not have a minimum lot size requirement larger than 12.42 acres.

4.6 (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 remains in the same configuration as described in the 1973 real estate contract (Exhibit A.3).

4.7 (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 parcel was created by the recording of a real estate contract in 1973 which followed the land division process at that time (Exhibit A.3). The subject property was not

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

Based upon the findings in 4.1 through 4.7, the subject property is a single approximately 12.42 acre 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 T2-2019-12426 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	09.05.2019
A.2	3	Warranty Deed recorded on November 20, 2017 as Instrument no. 2017-139771	09.05.2019
A.3	4	Real Estate Contract recorded on January 11, 1973 in Book 903, Page 1668-1671	09.05.2019
A.4	1	Parcel Record Card for 1S4E04DB -00300	09.05.2019
A.5	12	Title Report from November 22, 1989	09.05.2019
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	09.05.2019
B.2	1	1962 Zoning Map for 1S4E04	09.05.2019
B.3	1	F2 Zoning Regulations from Ordinance No. 100 as amended adopted May 21, 1968.	09.05.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	09.18.2019
C.2	2	Opportunity to Comment	09.26.2019
C.3	8	Administrative Decision	10.16.2019