

NOTICE OF DECISION

Case File: T2-2019-12329

Permit: Lot of Record Verification

Applicant(s): Mike Abbott **Owner(s):** Mike Abbott

Location: 28821 SE Powell Valley Rd., Gresham
Tax Lot 300, Section 19, Township 1 South, Range 4 East, W.M.
Tax Account #R994190470 Property ID #R342154

Zoning: Exclusive Farm Use (EFU)

Overlays: Significant Environmental Concern – water resources (SEC-wr)

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 current configuration of the subject property (1S4E19 – 00300) is a Lot of Record

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, November 11, 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, Planner

For:

Adam Barber,
Interim Planning Director

Date:

Monday, October 28, 2019

Instrument Number for Recording
Purposes: #2007 -032289

N↑



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*.

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. 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.

- Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

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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 19, Township 1 South, Range 4 East, W.M. (the “subject property”). The approximately 13.16 acre property is located adjacent to SE Powell Valley Road and identified as 28821 SE Powell Valley 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 the rural area of East Multnomah County and outside of the Metro urban growth boundary. The eastern border of the City of Gresham is one property west of the subject property. Hence, the subject property is located in the transition area where the urban nature of the City ends and the rural area begins. Tax records indicate improvements on the property include a single-family dwelling constructed in 1938, a Farm Building, and a detached garage. Other buildings can be seen in recent aerial photographs but are not listed in the tax records. These buildings include at least two greenhouses. Tax records also list a second dwelling on the site.

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. Nonetheless, there is an active compliance case, case #UR-2018-10922, regarding the non-permitted placement of a second dwelling (manufactured dwelling) on the subject property.

4.0 LOT OF RECORD:

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 the minimum lot size, dimensional standards, and access requirements.

In 1942, a 18.34+/- acre parent parcel was created. The subject property was created from this original parent parcel through future land divisions (Exhibit A.4). That parent parcel was reduced on two occasions. The first reduction occurred in 1954 when a 4.87-acre unit of land known as old Tax Lot '56' (Exhibit B.3) was created via warranty deed (Exhibit A.11). The second reduction occurred in 1957 when a 0.31-acre property known as old Tax Lot '112' (Exhibit B.3) was created via real estate contract (Exhibit A.6). This real estate contract was fulfilled in 1964 as noted in the warranty deed included as Exhibit A.7. Following these two reductions, the original 18.34 +/- acre parent parcel had a remainder of approximately 13.16 acres. This 13.16 +/- acre remainder parcel is identified on the 1962 County Zoning Maps as old Tax Lot '47' (Exhibit B.2 & B.3).

As shown on the County Department of Assessment & Taxation's Parcel Record card for the subject property (Exhibit A.4), old Tax Lot '47' became 1S4E19-00300 (Tax Lot 300). The applicant provided a Bargain and Sale Deed from 2007 (Exhibit A.3) that contains a legal description that matches the configuration of old Tax Lot '47'. This 2007 deed also contains language that excepts out the two areas of land in tax lots '56' and '112' created via the reductions of the parent parcel noted above. Therefore, the approximately 13.16 acre subject property was first created in 1957.

In 1957, the subject property was zoned Suburban Residential 'SR' (Exhibit B.3); however, the SR zone was not adopted until 1958. As a result, when the 13.16 acre subject property was created in 1957, there was not yet a minimum lot size in effect for the area.

Applicable Land Division Laws

In 1957, the process to divide a property 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 1957 did satisfy all applicable land division laws and all applicable zoning 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: According to County Tax Records, Carolyn Chase owned the subject property on February 20, 1990. The applicant did not provide any deed or contract that would contradict the tax record. Ms. Chase was not a listed owner on the tax records for any contiguous lot. Therefore, the subject property is not subject to aggregation and is a 13.16 +/- acre Lot of Record. *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 in 1957. Although, it does not meet the current minimum lot size of 80 acres for the EFU zone, the subject property is a legal Lot of Record as described in section 4.1 and 4.2 above. The subject property exceeds the current minimum front lot line size of 50 feet and has access from SE Powell Rd., a County Road. Therefore, the subject property may be occupied by any allowed use, review use, or conditional use when in compliance with the other requirements of this district.

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 property is a 13.16 +/- acre parcel created in 1957. This parcel was not created by the foreclosure of a security interest or a court decree. This parcel is not an area of land described solely for assessment and taxation purposes nor is it a mortgage lot. *Criteria met.*

Based upon the findings in 4.1 through 4.4, the subject property is a single 13.16 +/- acre Lot of Record.

5.0 COMMENTS RECEIVED:

5.1 Comments from Noelle & Garen Swafford, Nearby Property Owners

The Swaffords expressed their desire for the property to remain zoned EFU. They also discussed wildlife and other environmental considerations in the area.

Staff: Comments noted. This proposal is not for a zone change and is solely a Lot of Record Verification as described in section 1.0. No development is proposed as part of this request as noted in section 2.0 and 3.0.

6.0 EXHIBITS:

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Public Comments

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 T2-2019-12329 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	08.08.2019

A.2	5	Title Report Cover Page and Maps	08.08.2019
A.3	2	Bargain and Sale Deed recorded on February 22, 2007 as Instrument no. 2007 -032289	08.08.2019
A.4	1	Parcel Record Card for 1S4E19 -00300	08.08.2019
A.5	1	Bargain and Sale Deed recorded on December 12, 1983 in Book 1712, Page 270	08.08.2019
A.6	2	Real Estate Contract recorded October 10, 1957 in Book 1866, Page 332	08.08.2019
A.7	1	Warranty Deed recorded on July 22, 1964 in Book 90, Page 101	08.08.2019
A.8	1	Survey recorded in 1859 as survey no. 06856	08.08.2019
A.9	1	Survey recorded in 1993 as survey no. 53689	08.08.2019
A.10	5	Additional copies of the information contained in Exhibits listed above	08.08.2019
A.11	2	Warranty Deed recorded on March 24, 1954 in Book 1650, Page 222 - 223	10.09.2019
'B'	#	Staff Exhibits	Date
B.1	2	County Assessment & Taxation Property Information	08.08.2019
B.2	1	November 15, 1962 Zoning Map – 1S4E18C	08.08.2019
B.3	1	November 15, 1962 Zoning Map – 1S4E19B	08.08.2019
B.4	6	SR Zoning Regulations - June 18, 1964 Zoning Ordinance 100 as Amended	08.08.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	08.30.2019
C.2	2	Opportunity to Comment	09.10.2019
C.3	8	Administrative Decision	10.25.2019
'D'	#	Comments Received	Date
D.1	1	Comments from Noelle & Garen Swafford	09.20.2019