

## NOTICE OF DECISION

**Case File:** T2-2019-12423  
**Permit:** Lot of Record Verification  
**Applicant(s):** Mark Moore **Owner(s):** John Tran and Sarah Rozeboom  
**Location:** 22441 NW 220<sup>th</sup> Ave  
Tax Lot 2100, Section 26C, Township 2 North, Range 2 West, W.M.  
Alternate Account #R972260450 Property ID #R325984  
**Zoning:** Commercial Forest Use – 2 (CFU-2)  
**Overlays:** Significant Environmental Concern for wildlife habitat (SEC-h)  
**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. No development is being reviewed at this time that would trigger a SEC-h permit.

**Determination:** The subject property (2N2W26C -02100) 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 Tuesday, November 19, 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](mailto: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 190<sup>th</sup> 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:**

Tuesday, November 5, 2019

Instrument Number for Recording  
Purposes: #2018-118261

## 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 39.3030, Lot of Record – Commercial Forest Use -2.

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

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. 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 2100, Section 26C, Township 2 North, Range 2 West, W.M. (the “subject property”). The subject property is located adjacent to NW 220<sup>th</sup> Ave. and identified as 22441 NW 220<sup>th</sup> Ave.

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 West Multnomah County and is primarily zoned Commercial Farm Use-2 (CFU-2). The subject property is approximately 2.00 acres and is outside the Urban Growth Boundary and adjacent to the Washington County border. County Assessment and Taxation records for the property show a single-family dwelling constructed around 1973, 300 sq. ft. deck, 368 sq. ft. carport and a 100 sq. ft. shed.

### **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:**

##### **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.)

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**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 and/or reconfiguration, 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 warranty deed from December 14, 1970 describing the subject property (Exhibit A.4). Through the recording of the aforementioned warranty deed in 1970, the subject property was created and/or reconfigured to its current size of approximately 2.00 acres.

At the time of recording of the 1970 deed, the zoning in the area was 'F-2' (Exhibit B.3). The minimum lot size for the F-2 zone was 2.0 acres. (Exhibit B.4). There was not a minimum front lot line length or other minimum standards in the F-2 zone. Therefore, in 1970, the subject property met the minimum lot size requirements and satisfied all applicable zoning laws at that time it was created and/or reconfigured.

#### Applicable Land Division Laws

In 1970, the process to divide a property into new units of land was to write up a new legal description 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.4).

*Based on the information discussed above, the creation and/or reconfiguration of this parcel in 1970 satisfied all applicable zoning and land division laws at the time.*

#### **4.2 MCC 39.3030 Lot of Record – Commercial Forest Use-2**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 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 MCC 39.3070 Figure 1 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, BRC, R10), 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...**

**(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...**

**Staff:** The listed property owner in the 1989 and 1990 tax records is the Scharf family. The tax records do not show any contiguous parcels or lots owned by the Scharf family or its family members as of February 20, 1990. Therefore, the subject property is not subject to aggregation and is a 2.00 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 39.4135, 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 1970 warranty deed (Exhibit A.4). The CFU zone has a minimum lot size of 80 acres to create a new parcel, a requirement for a 50-ft front lot line and road frontage. The subject parcel has a front lot line greater than 50-ft in length adjacent to NW 220<sup>th</sup> Ave., so it also meets the access requirement (Exhibit B.2). The subject 2.00 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 and/or reconfigured by the recording of a warranty deed in 1970 which followed the land division process at that time (Exhibit A.4). 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.*



## 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 #T2-2019-12423 at the Land Use Planning office.

<b>Exhibit #</b>	<b># of Pages</b>	<b>Description of Exhibit</b>	<b>Date Received/ Submitted</b>
A.1	2	General Application Form	09.04.2019
A.2	1	Site Plan and Deed Narrative	09.04.2019
A.3	3	Warranty Deed recorded on November 15, 2018 as instrument number 2018-118261	09.04.2019
A.4	2	Warranty Deed Recorded December 14, 1970 in Book 764, Page 172	09.04.2019
A.5	1	Warranty Deed Recorded December 14, 1970 in Book 764, Page 173	09.04.2019
A.6	1	Parcel Record Card for 2N2W26C -02100	09.04.2019
A.7	7	Supplemental Property Information	09.04.2019
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	County Assessment & Taxation Property Information	09.04.2019
B.2	1	Survey record #33056 recorded on December 15, 1970	09.04.2019
B.3	1	1962 zoning map for map 2N2W26	09.04.2019
B.4	1	F-2 Zoning Regulations – Zoning Ordinance 100 as amended adopted May 21, 1968	09.04.2019
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete Letter (Day 1)	10.04.2019
C.2	2	Opportunity to Comment	10.18.2019
C.3	7	Administrative Decision	11.05.2019