
NOTICE OF DECISION

Case File: T2-2019-11965
Permit: Property Line Adjustment
Applicant: Colleen Spurgeon, Township Surveys
Owner Tract 1: Mary Holscher (Tax Lot 1400)
Owners Tract 2: Natalie & Alfonso Aguilar (Tax Lot 1300)
Location: 16520 & 16530 SE Foster Road
Tax Lots 1300 & 1400, Section 19BB, Range 1 South, Range 3 East.
Alt. Acct # R993190090 & R993191690
Property ID# R340580 & R340717
Base Zone: Rural Residential
Overlays: Significant Environmental Concern for Water Resources
Proposal Summary: Request for a Property Line Adjustment review to transfer 0.769 acres from Tract 1 (property described as Tax Lot 1400) to Tract 2 (property described Tax Lot 1300).

Decision: **Approved / Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is December 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 George Plummer via email at george.a.plummer@multco.us or at (503) 988-0202 or (503) 988-3043 for Planner on Counter Duty, office hours 8 am to 4 pm Tuesday through Friday.

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.

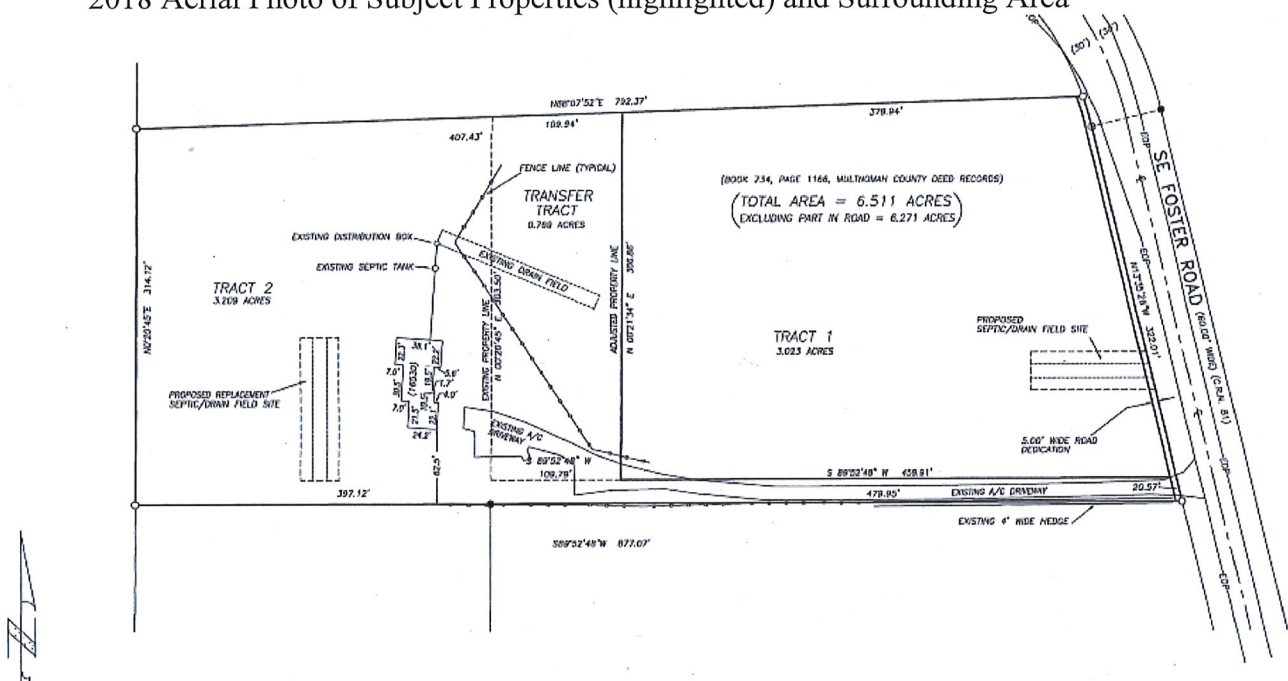
Issued by:


George A. Plummer, Planner

For: Adam Barber, Interim Planning Director

Date: December 5, 2019

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Submitted Property Line Adjustment Plan Map

Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): MCC 39.2000: Definitions, MCC 39.3005: Lot of Record – Generally, MCC 39.4380(B) Rural Residential Zone Property Line Adjustments, MCC 39.9300: Land Division Section Standards for Property Line Adjustments and MCC 39.4375(C) Rural Residential Zone Minimum Yard Dimensions.

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-304 or by visiting our website at <https://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. Approval of this land use permit is based on the submitted written narrative and plan. 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.
2. **This land use permit expires two (2) years from the date the decision is final pursuant to MCC 39.1185(A) as applicable.** For this property line adjustment to be completed, the survey shall be recorded and new deeds with adjusted legal descriptions shall be recorded with the County Recorder. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

Failure to record new deeds as described in Condition Number 5 (below) with the adjusted legal descriptions after this decision becomes final will result in the expiration of this decision after two years.

3. The property owner(s) or their representative(s) shall ensure the property line adjustment is completed following the procedures provided in the “Surveyor’s Instructions for Finishing a Property Line Adjustment” (Exhibit B.5) and the “Applicant’s Instructions for Finishing a Property Line Adjustment” (Exhibit B.6). [MCC 39.9300(D)]
4. Prior to recording the deeds with County Records Division, the property owner(s) or their representative(s) shall submit the copies to be recorded of the final survey and deeds with the metes and bounds legal descriptions to Multnomah County Land Use Planning for verification that the adjusted properties conform to the Tentative Plan Map (Exhibit A.2) [MCC 39.9300].

If the submitted documents conform to the approved Tentative Plan Map and zoning requirements, County Land Use Planning staff will stamp and sign the survey and deeds. There shall be three deeds with legal description submitted as follows:

- (1) **The Transfer Property:** The deed with the metes and bounds legal description for the transfer portion, which is the land to be transferred from Holscher to the Aquilars, the two property owners.

- (2) **The Enlarged Aquilars Property:** The deed with the new metes and bounds legal description for the Aquilars property with the transferred portion merged into the metes and bounds legal description (one description).
- (3) **The Reduced Holscher Property:** The deed with the new metes and bounds legal description for the Holscher property with the transferred portion removed from the property's legal description.

Each submitted legal description to be reviewed shall have a minimum of area on the page below the legal description of two by five inches to accommodate County Land Use Planning approval stamp. Once stamped, the legal description attached as an exhibit to deeds are ready to be recorded with Multnomah County Records Division at 501 SE Hawthorne Blvd.

5. When the property owners or their representative record the deeds with the stamped legal description attached as an exhibit to complete the property line adjustment with Multnomah County Records Management Division, they shall do so in this order:
- **First, File Deed Transferring the Property:** The deed shall be recorded with the legal description transferring the land ownership from Holscher to Aquilars.
 - **Second, File Deed Enlarging the Aquilar Property:** The deed and new legal description shall be recorded that describes the authorized enlarged Aquilar property with the transferred area merged into new legal description.
 - **Third, File Deed Reducing the Holscher Property:** The deed and new legal description shall be recorded that describes the authorized smaller Holscher property last.
 - **Fourth, File PLA Map:** Shall file for recording a stamped copy of the survey map of the property line adjustment

The recordation of the deeds and map in this order will ensure that no new unauthorized parcel is created [MCC 39.9300(A)]. For each of the properties, a new deed with the attached new stamped metes and bounds legal descriptions shall be filed for recording with County Records Management within the two year approval period [MCC 39.9300(B)].

6. The transferred property shall not exist as a separate unit of land or tax lot after the property line adjustment is completed. No additional lot or parcel shall be created through this property line adjustment process [MCC 39.9300(A)]. If this happens it is a violation of this approval and shall be resolved prior to the expiration of this case.

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. PROJECT DESCRIPTION

Staff: Request for a Property Line Adjustment Permit review to transfer 0.769 acres from Tract 1 (Tax Lot 1400 the eastern property) to Tract 2 (Tax Lot 1300 the western property). According to the submitted “Preliminary Plan” by Township Surveys, LLC (Exhibit A.2) after the PLA the eastern parcel will be 3.023 acres and the western parcel will be 3.209 acres with 0.769 acres exchanged.

2. PROPERTY DESCRIPTIONS AND COMPLIANCE

Staff: Both of the subject properties abut and are accessed from Foster Road. According to the County Assessment record (Exhibit B.1), the existing eastern parcel (Tax Lot 1400) is 3.69 acres and abuts Foster Road for about a 322 foot length (Exhibit B.2). According to the County Assessment record (Exhibit B.1) the western parcel is 2.44 and abuts Foster Road as a flaglot with 20.6 foot length frontage along Foster Road (Exhibit A.2 and B.2). Both parcels are under five acres.

The properties previously had a zoning violation with an unpermitted shed that straddled the property line and did minimum yard setbacks for the southern property lines of both properties. That shed was removed as show in the photo included as Exhibit A.11. There are no other known code compliance issues for the two properties.

3. LOT OF RECORD

3.1. Lot of Record - Generally

3.1.1. MCC 39.3005(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.

Staff: Findings for Subsection (B) of this Section are below under Finding 3.1.2 and findings for the Zoning District in which the area of land is located is under Finding 3.2 below.

3.1.2. MCC 39.3005(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: The application submittal includes a copy of mortgage contract recorded with County Records on May 21, 1974, in Book 987, on Page 523 (Exhibit A.12) describing both properties. The contract includes a metes and bound legal description that encompasses both of the subject properties and the deed then states, "excepting therefrom the South 20 feet and the West 300 feet" or what is now the western subject property that is known as Tax Lot 1300. With the legal description on the contract excepting out the "South 20 feet and the West 300 feet" out of the property, the eastern portion of the deed description is what remained as described on the deed, the property known as Tax Lot 1400, the eastern subject property. Thus, both properties existed as they currently do on the day this contract was signed on May 17, 1970. This contract included as Exhibit A.12, is likely the instrument that divided the parent parcel, creating the two subject parcels, given there is a May 17, 1970 deed (Exhibit A.5) describing the two properties as one property, the parent parcel.

The 1974 contract (Exhibit A.12) shows the property existed when the properties were zoned Suburban Residential (SR) shown on Exhibit B.3. The SR Zone District had a series of minimum lots sizes depending of services with the largest minimum being 40,000 square feet (Exhibit B.4). Tax Lot 1300 is 2.44 acres and Tax Lot 1400 is 3.69 acres (Exhibits B.1 and B.2) each significantly exceeding the largest minimum lot size of 40,000 sq. ft. Additionally, the SR Zone requirements for a land division required that each property abut a street and that each parcel have a minimum average width of 70 feet and a minimum depth of 100 feet. Both parcels met these standards (Exhibit B.4). Both of the parcels met the zoning requirements.

In 1974 it was an allowed and common practice to divide a property into two parcels by filing a deed describing that land division. The 1974 deed describe an "excepting therefrom the South 20 feet and the West 300 feet" or the western subject property that is known as Tax Lot 1300 leaving the eastern property as existing with that portion described not excepted out. Filing a subdivision was only required if more than three lots were created. Thus, the subject parcels were lawfully created through meeting the minimum standards of the SR Zone and the land division requirements and procedures that existed in 1974 and prior. The two parcels were created through a lawful process satisfying all applicable land division laws

The two parcels met the zoning requirements and land division law when they were created, thus both parcels met these standards.

3.2. Lot of Record – Rural Residential (RR)

3.2.1. MCC 39.3090(A) In addition to the standards in MCC 39.3005, for the purposes of the RR 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, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

Staff: The subject parcels were located within an area that was zoned Suburban Residential (SR) on July 10, 1958. The SR Zone designation remained until October 6, 1977 when the zoning was changed to Rural Residential. The two parcels existed on May 17, 1974 (Exhibit A.12) and they met the SR zoning and land division requirements in 1974. *Thus, the two parcels are each stand-alone Lots of Record.*

3.2.2. MCC 39.3090(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 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Both parcels are less than the current Rural Residential five-acre minimum lot size. This code section allows properties that are Lots of Record to be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district. The proposal is a Property Line Adjustment between two lots of record, which is allowed if the proposal meets MCC 39.4380(B) and MCC 39.9300. Findings for compliance with MCC 39.4380(B) and MCC 39.9300 in Section 4 and 5 following in this decision

4. RURAL RESIDENTIAL ZONE

4.1 Rural Residential Yard Setbacks

MCC 39.4375(C): Minimum Yard Dimensions

Front	Side	Street Side	Rear
30 feet	10 feet	30 feet	30 feet

Staff: The existing development on both properties currently exceed all the minimum yard dimensions and the after the proposed Property Adjustment will continue meet all the minimum yard setbacks. *The proposed PLA meets these standards.*

4.2 Rural Residential Property Line Adjustment

MCC 39.4380(B) Pursuant to the applicable provisions in MCC 39.9300, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

4.2.1. (1) The following dimensional and access requirements are met:

- (a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements;**
- (b) If the properties abut a street, the required access requirements of MCC 39.4395 are met after the relocation of the common property line; and**

Staff: The Property Line Adjustment will not have any impact on meeting compliance with all minimum yard and minimum front lot line length requirements for both properties. Both properties currently meet all minimum yard and minimum front lot line length requirements and will continue to meet these standards after the PLA under subsection (a). The staff finding below under Section 4.3 of this decision addresses MCC 39.4395. Both properties currently meet this stand and will after the PLA. *These standards are met by the proposed PLA.*

4.2.2. (2) At least one of the following situations occurs:

- (a) The lot or parcel proposed to be reduced in area is larger than 5 acres prior to the adjustment and remains 5 acres or larger in area after the adjustment, or**
- (b) The lot or parcel proposed to be enlarged in area is less than 10 acres in area prior to the adjustment and remains less than 10 acres in area after the adjustment.**

Staff: According to County Assessment (Exhibit B.1) the existing eastern parcel is 3.69 acres and the western parcel is 2.44 acres. Both parcels are under five acres. According to the submitted "Preliminary Plan" by Township Surveys, LLC (Exhibit A.2) after the PLA the eastern parcel eastern will 3.023 acres and the western parcel will be 3.209 acres with 0.769 acres exchanged. The parcel proposed to be enlarged in area is less than 10 acres in area prior to the adjustment and remains less than 10 acres in area after the adjustment. *The proposal meets subsection (b).*

4.3. Access

MCC 39.4395 All lots and parcels in this base zone shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3090(B).

Staff: Both properties currently meet the access requirement by abutting Foster Road, with eastern property abutting the road with 300 plus feet of frontage and the western property via a flag lot with the a 20 foot wide frontage on Foster Road. *This stand is met for both proposed parcels.*

5. LAND DIVISION SECTION STANDARDS FOR PLA

MCC 39.9300: A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

- 5.1. (A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

Staff: A condition of approval will require No additional parcel be created from any parcel by the property line adjustment. The transfer tract must be merged into the western parcel's metes and bounds legal description once it is transferred to meet the conditions of approval and to be a legally completed PLA. *This standard is met by implementing the conditions of approval.*

- 5.2. (B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

Staff: The owner of both properties signed the PLA application form (Exhibit A.1). A condition of approval will require the owners of both properties involved in the property line adjustment record a conveyance or conveyances conforming to the approved property line adjustment. *This standard is met by implementing the conditions of approval.*

- 5.3. (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the base zone; and**

Staff: The findings in Section 4 of this decision, above, and documents submitted demonstrate proposed adjusted properties meet the approval criteria for a property line adjustment as given in the base zone. This standard is met.

- 5.4. (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

Staff: The property forms have been submitted. Conditions of Approval will require procedure the property line adjustment to be followed to complete the property line adjustment. This standard is met by implementing the conditions of approval.

6. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of the proposed Property Line Adjustment with Conditions located in the Rural Residential Zone. This approval is subject to the conditions of approval established in this report.

8. EXHIBITS

'A' Applicant's Exhibits

'B' Staff Exhibits

Exhibits are store in the Case T2-2019-11965 file at Multnomah County Land Use Planning Office and are viewable upon making an appointment and request the file (contact information listed earlier if this document.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	5/14/19
A.2	1	Tentative Property Line Adjustment Map	5/14/19
A.3	4	Property Line Adjustment Application Narrative	5/14/19
A.4	6	Chicago Title Company Metroscan Property Scan	5/14/19
A.5	1	Copy of deed signed by grantor and grantee on May 14, 1970 recorded on May 23, (illegible year) in Book 734 on Page 1100	5/14/19
A.6	1	Aerial photo of the subject properties	5/14/19
A.7	1	Septic Review Certification addressing PLA	5/14/19
A.8	1	Storm Water Certification for Land Division & Property Line Adjustment form completed by Dan E Symons	5/14/19
A.9	1	Fire District Review	5/14/19
A.10	1	Legal description of the area proposed to be transferred	5/14/19
A.11	1	Photo of the area were the shed use to be showing the cement pad remaining.	9/30/19
A.12	2	Copy of deed record May 21, 1974 in Book 987, Page 523 describing both subject properties with the western one as an exception.	9/30/19
'B'	#	Staff Exhibits	Date
B.1	2	County Assessment property records	NA
B.2	1	County Assessment Tax Lot Map	NA
B.3	2	1966 Zone Map for the area	NA
B.4	3	Zoning Code in effect in 1974	NA
B.5	1	County Land Use Planning handout "Surveyor's Instructions for Finishing a Property Line Adjustment"	NA
B.6	1	County Land Use Planning handout "Applicant's Instructions for Finishing a Property Line Adjustment"	NA