

NOTICE OF DECISION

Case File: T1-2019-12522

Permit: Legalization of Lots that were Unlawfully Divided

Applicants: Richard N. Bergeron **Owners:** Richard N. Bergeron and Joyce C. Bergeron

Location: 7920 SE 252nd Avenue, Gresham
Tax Lot 4200, Township 1 South, Range 3 East, Section 23D, W.M.
Tax Account #R092605100 Property ID #R118917

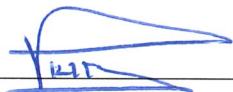
Base Zone: Multiple Use Agriculture (MUA-20)

Overlays: Significant Environmental Concern for Water Resources (SEC-wr)
Significant Environmental Concern for Wildlife (SEC-h)
Flood Hazard (FD)

Proposal Summary: The applicant request to legalize an existing property using Multnomah County Code (MCC) 39.9700 Legalization of Lots and Parcels that were Previously Unlawfully Divided.

Decision: Approved subject to Conditions of Approval

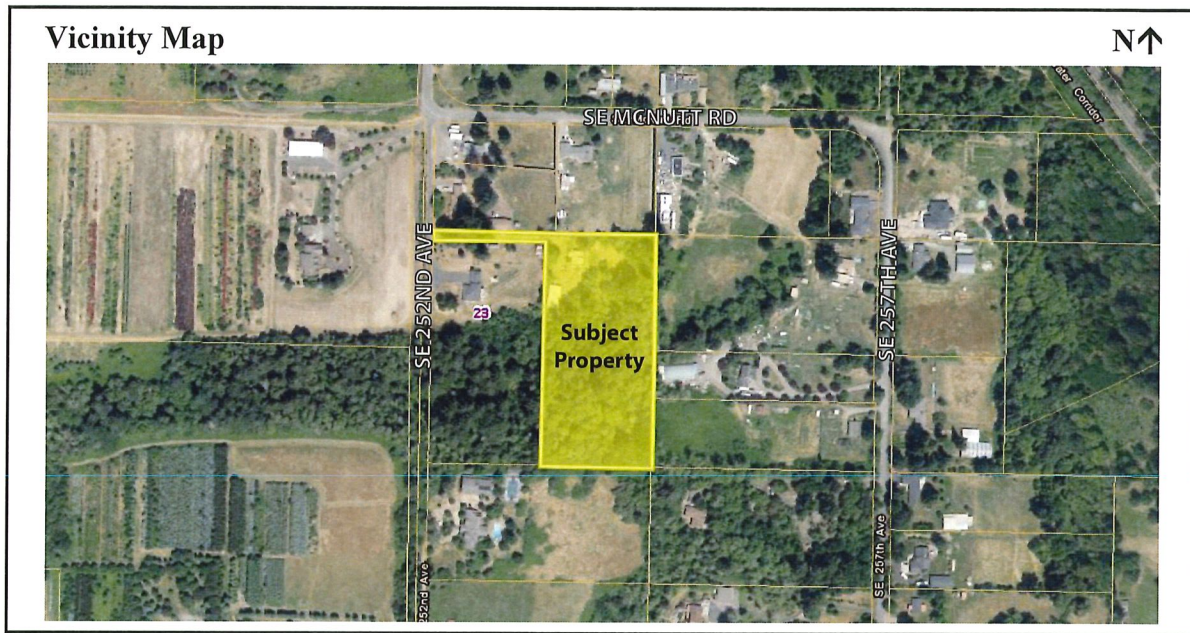
Issued by:



By: Rithy Khut, Planner

For: Adam Barber,
Interim Planning Director

Date: Monday, December 16, 2019



Applicable Approval Criteria:

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

Multnomah County Code (MCC): Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Definitions: MCC 39.2000 Definitions

Legalization of Lots and Parcels that were Previously Unlawfully Divided: MCC 39.9700(C)
 Legalization of Lots and Parcels that Were Previously Unlawfully Divided

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 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. 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.

1. Permit Expiration – This land use permit shall expire as follows:
 - a. Within ninety (90) days of the date of the final decision when a partition plat has not been recorded in accordance with the requirements of ORS Chapter 92. [MCC 39.9700(D)]

Note: No extension of the 90-day time period may be granted pursuant MCC 39.1195. Failure to record the partition plat within 90 days of the issuance of this decision will require a new land use decision to be applied for and approved to legalize the property.

2. Prior to recordation of the partition plat, the property owner(s) or their representative(s) shall:
 - a. Provide to the Land Use Planning Office a copy of the partition plat for review with compliance with this decision. The one-lot partition plat must be submitted within sixty (60) days of the date of the final decision to ensure adequate time for review. [MCC 39.1170(A) and MCC 39.9700(D)]
 - b. Submit to the County Surveyor for plan check a copy of the partition plat for review. The one-lot partition plat must be submitted within sixty (60) days of the date of the final decision to ensure adequate time for review. [MCC 39.1170(A) and MCC 39.9700(D)]
3. By **Friday, March 13, 2020**, the property owner(s) or their representative(s) shall record the one-lot partition plat approved by the County Surveyor and the Land Use Planning Division to legalize tax lot 1S3E23D -04200 with the County Recorder located at the Multnomah Building, 501 SE Hawthorne Boulevard. [MCC 39.9700(D)]
4. The date of creation of the legalized parcel is the date the partition plat is recorded. [MCC 36.9700(E)]
5. Development of a parcel approved pursuant to MCC 39.9700 shall be subject to the laws in effect at the time of the development application pursuant to ORS 215.427(3)(a). No retroactive use of land use laws is authorized by this code provision once the parcel is lawfully created. [MCC 39.9700(F)]

Note: Once this decision is final, the applicant(s) or property owner(s) shall complete the following steps:

1. Read your land use decision, the conditions of approval and be ready to submit your plans, if necessary, to meet any condition as described above. Be ready to demonstrate compliance with the conditions.
2. Contact Rithy Khut, Planner, at 503-988-0176 or rithy.khut@multco.us, for an appointment for review of the conditions of approval and to review the one-lot partition plat. Land Use Planning must sign off on the one-lot partition plat. At the time of this review, Land Use Planning will collect additional fees.

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 is requesting a lot legalization through the use of the provisions within MCC 39.9700, which allows for the legalization of lots and parcels that were previously unlawfully divided for property located at 7920 SE 252nd Avenue also known as tax lot 1S3E23D -04200 (tax lot 4200).

2.0 Property Description & History:

Staff: The Legalization of Lots and Parcels that Were Previously Unlawfully Divided is for one tax lot located at 7920 SE 252nd Avenue (also known as tax lot 4200). The property is 4.98 acres and is located on the east side of SE 252nd Avenue within the Multiple Use Agriculture – 20 (MUA-20) zoning district in the West of Sandy River Rural Area. A part of the Botefuhr Tracts Subdivision, the property is configured as a flag lot and has multiple overlays on the property including: Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Water Resources (SEC-wr) and the Flood Hazard (FH). The SEC-h overlay covers the northeastern portion of the property and the SEC-wr and FH overlay bisect the middle of the property.

Multnomah County Department of Assessment, Records, and Taxation (DART) indicate that the subject property is owned by Richard and Joyce Bergeron. According to DART records, the subject property contains a single-family dwelling with an attached deck and a shop. The dwelling was first assessed in 1979. Aerial photos indicate that the “shop” did not appear on the property until after 1986. No land use permits were identified for the construction of the “shop.” The property has one previous land use/building permit associated with the subject property:

- March 23, 1978 – Permit No. 780601 – New single-family dwelling

More recently, the applicant sought a Lot of Record Verification. The Lot of Record Verification in Land Use Case T2-2019-12283 found that the subject property, tax lot 4200 was improperly created in October 5, 1976 as remainders of Botefuhr Tracts lots 95 and 96. Due to this fact, the applicant is now requesting lot legalization process as contained in MCC 39.9700 Legalization of Lots and Parcels that were Previously Unlawfully Divided.

3.0 Code Compliance and Applications Criteria:

3.1 § 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 required above the County shall not make a land use decision approving development for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. The applicant's request is for the Legalization of Lots that were Unlawfully Divided. No development is being approved as part of this review.

Additionally, in comparing aerial photos from 1986 and 1990, it appears that the accessory building was placed on the property at some point between those dates. A Code Compliance case #UR-2019-12059 was opened at the request of the property owner to provide a pathway to permit the accessory building. Although, the accessory building authorization will not be part of this application, the Legalization of Lots that were Unlawfully Divided is the second component of the sequencing of permits or other approvals that is part of a voluntary compliance agreement (VCA) between the property owner and the County Code Compliance Program. In issuing this decision, it will move the property towards full compliance with all applicable provisions of Multnomah County Code.

This decision is part of the sequencing of permits as outlined in the voluntary compliance agreement that will ultimately result in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code; therefore, the County can make this decision to correct the land division problem.

4.0 Legalization of Lots and Parcels that were Unlawfully Divided Criteria

4.1 § 39.9700 LEGALIZATION OF LOTS AND PARCELS THAT WERE PREVIOUSLY UNLAWFULLY DIVIDED.

This Section provides the mechanism to review and, based upon findings of compliance with specific approval criteria, to approve certain unlawfully divided lots or parcels. The review mechanism to correct an unlawfully divided unit of land differs according to the date the unlawful lot or parcel was divided as provided in Subsections (A) and (B) of this Section, or under Subsection (C) of this Section if a land use permit was issued for a

primary use. For the purposes of this section, an “unlawfully divided” lot or parcel means a lot or parcel that, when divided, did not satisfy all applicable zoning and land division laws.

- 4.2 (C) A lot legalization application to create a lot or parcel may be made through a Type I application process when the County issued a land use permit prior to January 1, 2007 for a dwelling or other building on an unlawfully established unit of land, provided the following criteria are met:

(1) The land use permit was issued after the sale of the unlawfully established unit of land to a new property owner; and

Staff: The applicant is applying for a lot legalization through a Type I application process. The application was requested after it was found in T2-2019-12283 that the subject property, tax lot 4200, was unlawfully created on October 5, 1976 by Francis Midway Inc. (Exhibits A.4 and B.4). The subject property was created as a remainder of Botefuhr Tracts lots 95 and 96. Subsequently a building permit was issued after the sale of the unlawfully established unit of land to William C. Clark, the new property owner at that time. The building permit, permit number 780601 was issued on March 23, 1978 for a new single-family dwelling (Exhibit A.2).

As required above, a lot legalization applicant can be requested since a building permit was issued after the sale of the unlawfully established unit of land to a new property owner. *This criterion is met.*

(2) There is a clear property description on the permit for the unlawfully established unit of land for which the building or placement permit was issued. The description may be confirmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time; and

Staff: The building permit has a clear property description on the permit for the unlawfully established unit of land. The permit describes the property as “7920 SE 252nd” and “Township 1 South, Range 3 East of Willamette Meridian, Lot 7, Block 95+96” (Exhibit A.2). The tax maps at that time indicate that Lot 7 matches the configuration of tax lot 7 (Exhibit B.4). *This criterion is met.*

(3) The land use permit was for a building for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and

Staff: The building permit was for a new principle use. The building permit, permit number 780601 was issued on March 23, 1978 for a new single-family dwelling (Exhibit A.2). *This criterion is met.*

(4) There is a copy of the land use permit in the records of Multnomah County or its authorized agents and the land use permit indicates that the proposed development on the unlawfully established unit of land complied with zoning and land division requirements; and

Staff: The building permit found was a copy of the building permit in Multnomah County Records. The building permit form contains a signature dated on March 13, 1978 that indicates “Zoning Appr.” (Exhibit A.2). *This criterion is met.*

(5) If the approved land use permit was for a dwelling, the building currently qualifies as a habitable dwelling as defined in MCC 39.2000; and

Staff: The building currently qualifies as a habitable dwelling. As defined in MCC 39.2000, a habitable dwelling is defined as:

Habitable Dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;**
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) Has interior wiring for interior lights;**
- (d) Has a heating system; and**
- (e) Was lawfully established.**

The applicant has provided photographs of the exterior and interior of the dwelling that demonstrates that it qualifies as a habitable dwelling as defined above (Exhibit A.6). *This criterion is met.*

(6) The building was constructed under a valid building permit and the building remains on the unlawfully established unit of land described in Subsection (2) of this Subsection (C).

- (a) A County building permit was issued at the time and does not include plumbing, mechanical, electrical or other type of trade permit. An exempt farm structure approval is not a building permit.**

Staff: The building was constructed under a valid building permit and the building remains on the unlawfully established unit of land. As shown in the building permit, permit number 780601 issued on March 23, 1978, the new single-family dwelling completed and the building permit was deemed final on April 21, 1982 (Exhibit A.2). *This criterion is met.*

4.3 (D) Within 90 days of a final decision being approved under Subsection (A), (B) or (C) of this Section, the property owner(s) shall record a partition plat or subdivision plat, as appropriate, in accordance with the requirements of ORS Chapter 92.

Staff: As required above, a condition will be required, that within 90 days of this decision, the property owner(s) shall record a partition plat, in accordance with the requirements of ORS Chapter 92. *As conditioned, this criterion is met.*

4.4 (E) If an application to legalize a unit of land is approved under Subsection (A), (B) or (C) of this Section, the date of creation of the legalized parcel or lot shall be the date the partition or subdivision plat is recorded.

Staff: As required above, a condition will be required that the date of creation of the legalized lot shall be the date the partition plat is recorded. *As conditioned, this criterion is met.*

4.5 (F) Development of a parcel or lot approved pursuant to this section shall be subject to the laws in effect at the time of the development application pursuant to ORS

215.427(3)(a). No retroactive use of land use laws is authorized by this code provision once the parcel or lot is lawfully created.

Staff: The applicant is not proposing any new development as part of this application; however, if development is proposed after the lot legalization, a condition will be required that development of a lot approved pursuant to this section shall be subject to the laws in effect at the time of the development application pursuant to ORS 215.427(3)(a). Additionally, no retroactive use of land use laws is authorized by this code provision once the parcel or lot is lawfully created. *As conditioned, this criterion is met.*

- 4.6 (G) From January 5, 1966 to December 31, 2000, the County's zoning ordinance specified that in cases where a building permit is required under the Multnomah County Building Code, such building permit shall be deemed to be a land use permit. When reviewing a lot legalization application under Subsection (C) of this Section, building permits during this time period shall constitute a land use permit.**

Staff: As discussed previously in Section 4.2, the applicant has provided a building permit that was issued on March 23, 1978. As required in the criterion above, a building permit shall be deemed to be a land use permit. *This criterion is met.*

- 4.7 (H) The following do not qualify to legalize a lot or parcel under this Section:**
- (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 applicant is not requesting a legalization of a lot as described above. The lot as described by the Department of Assessment, Records, and Taxation is a unit of land known as tax lot 4200 and not an area of land described solely for assessment and taxation purposes. Additionally, tax lot 4200 is not an area of land created by the foreclosure of a security interest, mortgage lot, or an area of land created by court decree. The unit of land, known as tax lot 4200, was created by the re-division of existing lots in 1976. Tax lot 4200 consists of the remainder of Botefuhr Tract Lots 95 and 96 and was first described in a warranty deed recorded in July 20, 1982 (Exhibit A.5). *This criterion is met.*

5.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the legalization of tax lot 1S3E23D -04200 pursuant to MCC 39.9700(C) as allowed in the Multiple Use Agriculture (MUA-20) zone. This approval is subject to the conditions of approval established in this report.

6.0 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 T1-2019-12522 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Type 1 Application Form	10/03/2019
A.2	2	Building Permit No. 780601 issued on March 23, 1978	10/03/2019
A.3	1	Parcel Record – Cartographic Unit Card for 1S3E23D - 04200	10/03/2019
A.4	2	Warranty Deed recorded in Book 1130, Page 2313-2314 on October 5, 1976	10/03/2019
A.5	2	Warranty Deed recorded in Book 1607, Page 883-884 on July 20, 1982	10/03/2019
A.6	5	Photos of the existing single-family dwelling	12/10/2019
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S3E23D -04200 (R092605100)	10/03/2019
B.2	1	Department of Assessment, Records and Taxation (DART): Map with 1S3E23D -04200 (R092605100) highlighted	10/03/2019
B.3	10	Land Use Case #T2-2019-12283	12/08/2019
B.4	1	Zoning Map in effect on October 6, 1977	12/08/2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	10/25/2019
C.2	9	Administrative decision	