

## NOTICE OF DECISION

---

**Case File:** T2-2020-13508

**Permit:** Lot of Record Verification

**Applicant:** Joshua Tompkins **Owners:** Joshua and Katie Tompkins

**Location:** 921 SE Pounder Road, Corbett, OR 97019  
Tax Lot 1000, Section 02BA, Township 1 South, Range 4 East, W.M.  
Tax Account #R994020370 Property ID #R341153

**Base Zone:** Commercial Forest Use – 4 (CFU-4)

**Overlays:** Significant Environmental Concern – Stream

**Proposal Summary:** The applicant requests a Lot of Record Verification to determine if the subject property (1S4E02BA -01000) satisfied all applicable zoning and land division laws at the time of its creation/reconfiguration. The application does not propose any development.

---

**Determination:** The subject property identified as 1S4E02BA -01000 (921 SE Pounder Road) is a Lot of Record in its current configuration.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, January 25, 2021 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. Copies of these documents may be able to be sent to you in an email. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact Izze Liu, Staff Planner at 503-988-0213 or at [isabella.liu@multco.us](mailto:isabella.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:** 

**By:** Izze Liu, Planner

**For:** Carol Johnson, AICP  
Planning Director

**Date:** January 11, 2021

### Vicinity Map

N↑



### 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 39.3050 Lot of Record – Commercial Forest Use – 4 (CFU-4)

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**

### **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 PROPOSAL & PROPERTY DESCRIPTION:**

**Staff:** The applicant requests a Lot of Record Verification for a property identified as 1S4E02BA -01000 (the “subject property”). The subject property is located in the rural plan area known as the East of Sandy River in unincorporated Multnomah County and is zoned Commercial Forest Use (CFU-4). The subject property is outside of Metro’s urban growth boundary. The subject property contains a single-family dwelling and a detached garage. This application does not propose any new development.

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 GENERAL PROVISIONS:**

#### **2.1 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:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does *not* mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

For purposes of the current application, staff are not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This standard is met.*

### **3.0 LOT OF RECORD:**

#### **3.1 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**

**\*\*\***

**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.

The applicant provided a sales contract recorded in 1969 (Exhibit A.5) that contains a legal description that matches the current legal description for the subject property (Exhibit A.2). The subject property was zoned 'F-2' in 1969 per the historic County Zoning Maps (Exhibit B.2). In 1969, the F-2 zone had a minimum lot size requirement of 2 acres (Exhibit B.3). The subject property is 2 acres. *Based on the above, the subject property satisfied the applicable zoning laws of the F-2 zone in 1969.*

In 1969, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the sales contract recorded in 1969 (Exhibit A.5), the applicable land division laws were satisfied. *The subject property satisfied all applicable land division laws in 1969.*

### **3.2 MCC 39.3050 Lot of Record – Commercial Forest Use-4 (CFU-4)**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 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.**

\* \* \*

**(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;**
- (3) October 6, 1977, MUF-20 and CFU38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;**

\* \* \*

**(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.**

**(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:** According to the County’s historic tax records, the subject property was owned by James and Nellie Dunken on February 20, 1990. The Dunken family did not own any of the contiguous parcels; therefore, the subject property is not subject to aggregation. Subsection (B) is for information purposes. The subject property has not changed configuration since 1969. The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes; an area of land created by the foreclosure of a security interest; a mortgage lot; or an area of land created by court decree. *Based on the above, the subject property qualifies as a single Lot of Record.*

#### 4.0 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 T2-2020-13508 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	07.10.2020
A.2	2	Bargain & Sale Deed (2019)	07.10.2020
A.3	1	Warranty Deed (1951)	07.10.2020
A.4	34	Supplemental Application Materials	08.21.2020
A.5	3	Contract (1969)	09.21.2020
‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S4E02BA -01000	07.10.2020
B.2	1	Historic Zoning Map	01.11.2021
B.3	2	F-2 Zoning Regulations from Zoning Ordinance 100 as amended May 21, 1968 (Districts)	01.11.2021
‘C’	#	Administration & Procedures	Date
C.1	1	Incomplete Letter	08.07.2020
C.2	3	Opportunity to Comment	10.30.2020
C.3	6	Administrative Decision	01.11.2021