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September 12, 2022

Via Email: LUP.submittals@multco.us

Multnomah County Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233-5910

Re: Application for Lot of Record Determination
Unit of Land: 2N1W, Section 21, Tax Lot 1100
County File No.: T2-2022-15447
Our File No.: MAH16.4

To whom it may concern:

As you know, we represent Patrick Maher, applicant in the referenced matter. The Planning Director issued on Aug. 29, 2022 a decision denying the application. The applicant hereby appeals the decision.

MCC 39.1140 governs the appeal process and MCC 39.1160(A)(3) spells out the requirements of this appeal, *viz.*:

- (a) The county's case file number and date the decision to be appealed was rendered.
- (b) The name, mailing address and daytime telephone number for each appellant.
- (c) A statement of how each appellant has an interest in the matter and standing to appeal.
- (d) A statement of the specific grounds for the appeal.
- (e) The appropriate appeal fee.

We set forth the remainder of this information in the letter and the enclosed form. As to the "specific grounds for the appeal," we note that (per MCC 39.1160(6)) the hearing is to be *de novo*, and not limited to points raised herein. That said, in order to aid the hearings body, we provide the following observations.

The decision asserts that MCC 39.3070(A)(2) mandates denial of the application. That provision applies to "[a] group of contiguous parcels or lots . . . (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." Staff's conclusion is in error.



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As an initial matter, this mandate applies only if Tax Lot 1100 and 1200 constitute either "a parcel" or "a lot." Prior County decisions have found that neither unit of land holds such status. If we misread those decisions (such that the County considers Tax Lot 1100 and/or 1200 to constitute either "a parcel" or "a lot"), then please let us know that.

More substantively, MCC 39.3070(A)(2)(b) mandates aggregation of the adjacent parcels. The County determined in Case File No. T2-2021-14361 that such aggregation is to occur by way of Lot Consolidation. County staff conducted on Aug. 18, 2022 a Pre-Filing conference (County File No. PF-2022-15912) by which the applicant would consolidate Tax Lots 1100 and 1200. County staff noted during that conference that such consolidation is impossible because those units of land are not in the same ownership. The applicant disputes neither that factual assertion nor that legal conclusion.

Staff's Aug. 29 decision necessarily assumes that the law-writers intended to institute a legal impossibility, which (by all appearances) denies a given unit of land all economically beneficial use. Such assumption appears to violate canons of statutory construction as well as the Takings Clause. Contrary to staff's interpretation, the only legally sustainable reading is that MCC 39.3070(A)(2)(b) applies only in those circumstances where the subject units of land are capable of consolidation. As such, that provision of law is inapplicable here.

Lastly, the Decision fails to account for any permits that the County has issued for use and/or improvement of Lot 1100. Per LUBA's Final Order and Opinion in *Gansen v. Lane County* (dated Feb. 22, 2021), such permit issuance generally estops the County from disclaiming the legal lot status of the underlying unit of land.

Thank you for assisting and forward us any comments or questions.

Very truly yours,

Ty K. Wyman

TKW:tch

Enclosures

cc: Patrick Maher (w/encl. via email)
Katherine Thomas, Esq.

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1600 SE 190th Avenue, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF APPEAL

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. The county's case file number and date the decision to be appealed was rendered.
2. The name, mailing address, and daytime telephone number for each appellant.
3. A statement of how each appellant has an interest in the matter and standing to appeal.
4. A statement describing the specific reason for the appeal which includes the criteria or standard the appeal is addressing.
5. The appropriate appeal fee.

It is the responsibility of the Appellant to complete a Notice of Appeal as set forth in the Multnomah County Code. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on this form.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

Name: Maher, Patrick, _____
Last First Middle

Address: 5431 SE 72nd Avenue, Portland, OR, 97206
Street or P.O. Box City State Zip Code

Telephone: (503) 935 - 3005 (Day) or (_____) _____ - _____

Fax: _____ Email Address: atlastow1@gmail.com

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

Name: Wyman, Ty, _____
Last First Middle

Address: 851 SW Sixth Avenue, Suite 1500, Portland, OR, 97204
Street or P.O. Box City State Zip Code

Telephone: (503) 417 - 5478 (Day) or (971) 219 - 0694

Fax: 503-224-7324 Email Address: twyman@dunncarney.com

(over)

DECISION BEING APPEALED

CASE INFORMATION

Decision being appealed (e.g., denial of a NSA Site Review, approval of a SEC permit, etc.):
Denial of Lot of Record Verification - 16900 NW Sauvie Island Rd.

Case Number: T2-2022-15447 Date of Issuance of Decision: 8/29/2022

APPEAL INFORMATION

Answer each question as completely and specifically as you can. (Attach separate sheets if needed)

1. What is your interest in this decision? (State your interest in the matter and your standing to appeal)

Applicant

2. What are your objections to the decision? (State the specific grounds for the appeal, i.e. criteria or standard)

(SEE Letter from Ty Wyman dated September 12, 2022 submitted with this Notice, with grounds for appeal)

Standing to appeal: those who are entitled to appeal a decision include those who are entitled to notice under Multnomah County Code and include: owners of record of property within 750 feet of the subject tract, neighborhood associates, and persons who have identified themselves in writing as interested parties or as to be potentially aggrieved or impacted by the decision.

SIGNATURE: Ty Wyman DATE: 9.12.22

CHECK ONE: APPELLANT AUTHORIZED REPRESENTATIVE

Appeals and fees must be received prior to the close of the appeal deadline.

Deliver or mail appeal and fee to:
MULTNOMAH COUNTY
Land Use Planning Division
1600 SE 190th Ave., Suite 116, Portland, OR 97233
Phone: (503) 988-3043

FOR STAFF USE ONLY	
Fee: Notice of Appeal for Planning Director's Decision: \$250.00	
Received by: <u>LUP - SR</u>	Date: <u>9/12/2022</u>