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MULTNOMAH COUNTY
 PLANNING SECTION

August 19, 2021

Via Messenger Service Delivery

Multnomah County Land Use Planning Division
 Attn: Marisol Cervantes, Planner
 1600 SE 190th Avenue
 Portland, OR 97233-5910

Re: Notice of Appeal
 County Case File: T2-2021-14361
 Site: 2N1W, Section 21, Tax Lot 1100
 Applicant: Patrick Maher
 Our File No.: MAH16.1

Dear Ms. Cervantes:

We represent the applicant in the referenced matter, on which the Planning Director issued a decision on August 6, 2021. That decision approved the underlying application subject to a condition reading as follows:

Prior to Land Use Planning approving any development, building permit, zoning review, T1, T2 or T3 permit, the units of land contained in tax lots 2N1W21-01100 and 2N1W21-01200 shall be consolidated into a single parcel. The property owner or their representative shall apply for a Lot Consolidation pursuant to MCC 39.9200 before consolidating these two units of land. Once the two units of land are consolidated into a legal parcel, the parcel will be a Lot of Record.

The applicant hereby appeals the decision on the ground that it fails to justify this condition.

MCC 39.1140 governs the appeal process and MCC 39.1160(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 attached form, which County staff provided to us. 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 finds as follows:

According to Assessment and Taxation's Parcel Record Card (Exhibit B.7 & B.9) tax lot 2N1W21-01200 was created in 1967 through probate distribution of the Rose Howell Estate. . . . In the case of tax lot 2N1W21-01200, it was not lawfully established.

The Decision fails to explain how the deed history of Tax Lot 1200 relates to a request to verify the legal status of Tax Lot 1100. The Application explicitly relates only to the latter unit of land, which moots any determination about the legal status of the former.

Assuming, *arguendo*, that the title history of Lot 1200 relates to the subject application, the Decision fails to establish the persuasiveness of a parcel record card (exhibit B.7 to the Decision). Land use case law has long clarified that tax assessment records are not persuasive evidence of the existence of a given parcel, lot, or lot of record. Such history is generally recovered through a chain of title reported by a title company. I find in the Decision reference to no such chain of title for Lot 1200. Lacking evidence of how and when a person or persons created Tax Lot 1200, the Decision cannot render a persuasive finding regarding its creation.

Also, even were the title history of Lot 1200 relevant to this application, the Probate Order (Exhibit B.9) appears to constitute a *non sequitur*, as the ordered division of land would presumably have required County approval (which, if the land was in fact subject to a two-acre minimum lot size, would have been denied).

Lastly, the Decision fails to account for any permits that the County has issued for use and/or improvement of either Lot 1100 or Lot 1200. 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.

The foregoing moots the remaining findings set forth in the Decision, particularly regarding Lot Aggregation. First, Lot 1200 does not pertain to the application. Second, without a title history to Lot 1200, we lack evidence that it was in common ownership in 1990 with Lot 1100.



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To complete this appeal, we enclose a filled-out notice of appeal form and check for \$250.
Should you need any further information, please let me know.

Very truly yours,

Ty K. Wyman

TKW:car

Enclosures

cc: Patrick Maher (w/encl. via email)

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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: Mahe Last, Patrick First, _____ Middle

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

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

Fax: None 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 Last, Ty First, K. Middle

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

Telephone: (503) 417 - 5478 Direct (Day) or (503) 224 - 6440, ext. 478

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.):

Approval with Conditions

Case Number: T2-2021-14361 Date of Issuance of Decision: 08/06/2021

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)

I am the applicant for the subject decision.

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

Please see attached letter dated August 19, 2021.

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:  **DATE:** 08/19/2021
Ty K. Wyman

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

Appeal Notice

FOR STAFF USE ONLY	
Fee: Notice of Appeal for Planning Director's Decision: \$250.00	
Received by: _____	Date: _____