

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

MEMORANDUM

TO: Hearings Officer, Dan Kearns

FROM: Land Use Planning

RE: Arguments in the Appeal of T2-2021-14361

The appellant has made various arguments regarding the Lot of Record Verification, T2-2021-14361 and specifically has stated in their appeal that Condition No. 1 is not justified. Planning staff provides the following background, clarification and rebuttal information to those arguments.

Property #1:

16900 NW Sauvie Island Road

Map, Tax Lot #: 2N1W21-01100 (Referenced as '1100' on newer tax maps)

Alternate Account # R971210140 (Referenced on old tax lot maps as '14')

Property ID# R325150

Property #2:

No address

Map, Tax Lot #: 2N1W21-01200 (Referenced as '1200' on newer tax maps)

Alternate Account # R971210150 (Referenced on old tax lot maps as '15')

Property ID# R325151

The following graphic is to assist in understanding the tax lots involved:



Background Information

The applicant, Patrick Maher requested a Lot of Record Verification for tax lot 2N1W21-01100 (“tax lot 1100”) (Exhibit A.1). During the review process of the Verification, planning staff requested that tax lot 2N1W21-01200 (“tax lot 1200”) be added to the review because it appeared that the two properties might need to be aggregated for Lot of Record purposes. Because of the aggregation issue, staff would not be able to render a positive determination on the Lot of Record status of tax lot 1100 without also considering the Lot of Record status of tax lot 1200, including whether aggregation would be required. The applicant and the property owner amended the application to include both tax lot 1100 and tax lot 1200 (Exhibit A.6).

Clarifications to County’s Staff Report (Exhibit C.3)

For the findings for **MCC 39.3005 Lot of Record – Generally (B)(b) “Satisfied all applicable land division laws....”**. County Planning staff found there was not a corresponding deed creating tax lot 1200 in 1968. This is incorrect. Further review of Exhibit A.3 identified that it did include the legal description for tax lot 1200. The deed creating both tax lots 1100 and 1200 was recorded in 1968 (Exhibit A.3). As a result, tax lot 1200 did satisfy the applicable land division laws at the time it was created.

However, tax lot 1200 did not meet the minimum lot size at the time and therefore the finding that tax lot 1200 did not satisfy all applicable zoning laws at the time it was created remains correct. The fact that tax lot 1200 had a recorded metes and bounds description when it was created does not resolve the outstanding issue of satisfying the minimum lot size. In 1968, the area of land contained in tax lot 1200 was zoned F-2. The F-2 zone had a minimum lot size of 2 acres. Tax lot 1200 is approximately 1.39 acres, which includes the area of land under the public right-of-way for NW Sauvie Island Road. Tax lot 1200 is not 2 acres and hence did not meet the minimum lot size at the time it was created. Therefore, tax lot 1200 does not meet the Lot of Record standard set forth in MCC 39.3005(B)(a) because it was not created in full compliance with zoning minimum lot size.

Lot Consolidation Condition

To resolve the unlawful creation of the area of land in tax lot 1200, the County has provisions under MCC 39.9200 Consolidation of Parcels and Lots which allows units of land created by deed instruments prior to October 19, 1978 to obtain approval to consolidate and then record a new metes and bounds legal description in a deed. It may be used to correct unlawfully created units of land by consolidating them with a lawfully established parcel. Once the area of land contained in tax lot 1200 is combined with the land contained in tax lot 1100, the single parcel would be a single Lot of Record.

Response to Appellant’s Appeal Points (Exhibit D.1)

Appellant’s Point #1: “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.”

LUP Response: The applicant and property owner revised the Lot of Record Verification to include both tax lots 2N1W21-01100 (tax lot 1100) and 2N1W21-01200 (tax lot 1200) on July 2, 2021 (Exhibit A.6). Mr. Robideau represented to the County that he had the authority to grant permission for the Mabel R Dudley Estate, which is listed as the owner of tax lot 1200, and he gave his consent to add tax lot 1200 to the Lot of Record Verification application for tax lot 1100. (Exhibit A.7). In addition, as noted above, the Lot of Record Verification must include both units of land because of aggregation requirements.

Appellant’s Point #2: “[T]he 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.”

LUP Response: The burden of proof is upon the applicant to demonstrate, with evidence, that all of the applicable approval criteria are met. [MCC 39.1125]. The applicant did not submit a chain of title to support the Lot of Record Verification for tax lot 1200. However, there is sufficient evidence in the record, provided by the County, to find that tax lot 1200 was created in 1968. These documents include the 1962 deed (Exhibit B.4), 1968 Bargain & Sale Deed (Exhibit A.3), Order of Distribution (Exhibit H.9), and Parcel Record Card (Exhibit B.7). The County supplies the following summary for these documents to assist the Hearings Officer in this matter:

1962 Deed (Exhibit B.4):

The 1962 Deed transferring land from the Federal Land Bank of Spokane to Rose Mabel Howell has a legal description that includes the land area contained in tax lots 1100 and 1200 along with the land contained in tax lots 300, 400, 500, 1300, 1400 & 100 (minus the area south west of Howell Park Road)



1967 Order of Distribution & Agreement of the Rose Mabel Howell Estate (Exhibit H.9):

The Court’s Order of Distribution & Agreement did not include deeds, but was an agreement between the parties on how the lands owned by Rose Howell would be distributed. The numbers on the map below correspond to the numbered paragraphs in the Agreement attached to the probate order (Exhibit H.9).



The area of land shown as #5 was in the Agreement but the land area had already been transferred to Multnomah County prior to Order of Distribution on May 25, 1967.

April 1, 1968 Bargain & Sale Deed (Exhibit A.3):

Deed transferring the area of land per the Agreement (Exhibit H.9) to Mabel Dudley (#4, Parcel 1 & Parcel 2). Parcel 1 is the area of land contained in tax lot 1200. Parcel 2 is the area of land contained in tax lot 1100.

Parcel Record Card for 2N1W21-01200 (Exhibit B.7)

The Parcel Record Card for tax lot 1200 does not actually divide any land. It is for taxation purposes only but provides document research to determine the parent parcel for a newly created unit of land and the potential deed or contract that actually divided the land.

If, despite the evidence cited above, the Hearings Officer concludes that there is insufficient evidence to determine whether tax lot 1200 complied with zoning and land division laws when created or reconfigured, then the County requests that the Lot of Record Verification decision be amended. The amended decision should state that (1) there is insufficient evidence to support a finding that tax lot 1200 meets the standards in MCC 39.3005(B), and (2) because tax lot 1200 does not meet the standard in MCC 39.3005(B), the requirement to aggregate tax lot 1200 and tax lot 1100 results in a finding that the aggregated units of land do not qualify as a Lot of Record.

Appellant's Point #3: “[T]he Probate Order (Exhibit B.9) appears to constitute a *non sequitur* [sic], 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).”

LUP Response: The Appellant has not cited to any County Code provision to support the assertion that the ordered division of land would have required County approval. In fact, as the Staff Report indicated, this land division would not have required a land division application at the time. That fact, however, does not excuse the Appellant from showing that the property “satisfied all applicable zoning laws” when created or reconfigured, and that includes showing that the property was created or reconfigured “in full

compliance with all zoning minimum lot size * * * requirements.” Therefore, the Appellant must show that the property met the 2-acre minimum lot size for the F-2 zone in 1968 to meet that standard.

Appellant’s Point #4: “[T]he 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 February 22, 2021), such permit issuance generally estops the County from disclaiming the legal lot status of the underlying unit of land.”

LUP Response: The burden of proof is upon the applicant [MCC 39.1125]. The applicant has not identified any permits issued for tax lot 1100 or tax lot 1200 in which the County made a determination as to the Lot of Record status of either unit of land. In addition, planning staff found no land use applications or decisions for tax lot 1100 or tax lot 1200.

Appellant’s Point #5: “[W]ithout a title history to Lot 1200, we lack evidence that it was in common ownership in 1990 with Lot 1100.”

LUP Response: There is sufficient evidence in the record that demonstrates that tax lot 1100 and tax lot 1200 were in the same ownership on February 20, 1990. **MCC 39.4210 Definitions (EFU)** states “**Same Ownership – Refers to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control. For the purposes of this subsection, the seller of a property by sales contract shall be considered to not have possessory interest.**”

Exhibit B.10 was prepared by planning staff to show the land ownership of the subject tax lots and surrounding properties based on the 1989 & 1990 tax record. Tax records show the surrounding property owners for all adjacent properties. County staff then looked at the following information in the record:

Exhibit A.2: Title Records Report for 2N1W21-01100

Exhibit A.3: Bargain and Sale Deed – Shafer, Holm, Taber, Grantors to Mabel Dudley, Grantee dated April 1, 1968. The legal description transferred Parcel 1: 2N1W21-01200 and Parcel 2: 2N1W21-01100.

Exhibit A.4: Transfer on Death Deed – Mabel Rose Dudley, Grantor to Michael Robert Robideau, Grantee dated December 10, 2018. The legal description transferred the area of land contained in 2N1W21-01100.

Exhibit B.6: DART Property Information for 2N1W21-01200 (Exhibit B.6) confirms that this property was created in 1968 by Exhibits H.9 & A.3 and indicates that there were no further transfers until Mabel Rose Dudley’s death in 2019 at which point, it appears that the property transferred to the estate (Exhibit H.2). The Appellant has not offered any contrary evidence to show that tax lot 1200 was transferred to another owner between 1968 and 2019.

The above evidence demonstrates that Mabel Dudley owned the two tax lots on February 20, 1990. The following is a summary of the evidence:

Exhibits A.3 & A.4 demonstrate that Mabel Dudley was the owner of the area of land in tax lot 2N1W21-01100 (tax lot 1100) from April 1, 1968 to her death. The Death Certificate identifies her death as of October 8, 2019. Therefore, Mabel Dudley owned tax lot 1100 in February 1990.

Exhibits A.3 & B.6 demonstrate that Mabel Dudley was the owner of the area of land in tax lot 2N1W21-01200 from April 1, 1968 to October 8, 2019.

Lot of Record

Tax lot 1100 cannot qualify as a Lot of Record separate from tax lot 1200 as both areas of land were owned on February 20, 1990 by Mabel Rose Dudley. MCC 39.3070(A)(2) requires their aggregation for Lot of Record purposes.

Therefore, if the Hearings Officer agrees with the Appellant's argument that the condition requiring consolidation under MCC 39.9200 is not justified, the Hearings Officer would have to find that (1) tax lot 1200 does not meet the standard in MCC 39.3005(B) because it did not satisfy all applicable zoning laws when created, and that error has not been corrected; and (2) because tax lot 1200 does not meet the standard in MCC 39.3005(B), the requirement to aggregate tax lot 1200 and tax lot 1100 results in a finding that the aggregated units of land do not qualify as a Lot of Record. In other words, in the absence of the Lot Consolidation Condition, the Hearings Officer must deny the Lot of Record Verification for tax lot 1100 and tax lot 1200.

Conclusion

If the Hearings Officer agrees with planning staff that tax lot 1200 did not comply with zoning requirements during its creation, the method to correct the situation is to consolidate tax lot 1200 with the legally created tax lot 1100. Once these two areas of land are consolidated into one single parcel, the newly reconfigured parcel will be a single Lot of Record.