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DECISION OF HEARINGS OFFICER

This document is a final decision on appeal of the Planning Director's Decision in the land use case cited and described below.

Case File: T2-2019-11865

Permit: Lot of Record Determination

Location: Tax lot north of 33341 SE Carpenter Lane adjacent to SE Dodge Park Boulevard.
Tax Lot 900, Section 21DB, Township 1 South, Range 4 East, W.M.
Alternate Account #R994210130 Property ID #R342471

Applicant: Brian Stevens

Owner: Brian and Trisha Stevens

Base Zone: Multiple Use Agriculture -20 (MUA-20)

Overlays: None

Summary: The applicant requests a Lot of Record Verification for the above referenced property; whether the current configuration of the subject property satisfies the relevant Lot of Record approval criteria found in Multnomah County Code.

Decision: The site (1S4E21DB-00900) is not a Lot of Record in its current configuration.

A. SUMMARY

1. Brian Stevens (the “applicant”) filed an application on behalf of the property owners, Brian and Trisha Stevens, for verification that Tax Lot 900, 21DB, Township 1 South, Range 4 East of the Willamette Meridian, a 0.10-acre (4,356 square foot) triangular shaped parcel located between 33341 SE Carpenter Lane to the south and SE Dodge Park Boulevard to the north (the ‘site’), constitutes a Lot of Record as defined by MCC 35.0005. The site is zoned MUA-20 (Multiple Use Agriculture, 20-acre minimum lot size).

2. On September 20, 2019, the planning director (the “director”) issued a written decision determining that the site is not a Lot of Record in its current configuration. (Exhibit C.5)

3. Mr. Stevens filed a written appeal of the planning director’s decision on October 1, 2019.

4. County Hearings Officer Joe Turner (the "hearings officer") conducted a duly noticed public hearing to receive testimony and evidence regarding the appeal. Representatives of the applicant and County staff testified orally and in writing regarding the appeal. The only contested issue in this case is whether the 1972 property line adjustment was subject to the minimum lot size requirements of the SR zone in effect at that time.

5. Based on the findings provided or incorporated herein, the hearings officer hereby concludes that the 1972 property line adjustment was subject to the minimum lot size requirements of the SR zone and the adjusted property did not comply with those requirements. Therefore, the hearings officer denies the appeal and affirms the planning director’s decision in Case No. T2-2019-11865 (Stevens Lot of Record).

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this appeal on November 15, 2019. All exhibits and records of testimony have been filed with the Multnomah County Department of Community Services, Land Use Planning Division. The hearings officer opened the initial hearing by making the statements required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected relevant testimony.

2. County planner Katie Skakel, and assistant county attorney Katherine Thomas appeared on behalf of the County.

a. Ms. Skakel identified the applicable approval standards and summarized the director’s decision. In order to qualify as a Lot of Record, the applicant must demonstrate that the site complied with all applicable zoning laws and satisfied all applicable land division laws at the time the site was created or reconfigured.

i. The site is a portion of a 0.52-acre (22,651.2 square foot) parcel created by deed on March 24, 1908. On October 17, 1972, the 0.52-acre parcel was reconfigured through a property line adjustment with the adjacent property to the west, tax lot 1S4E21C – 00100, the Scenic Fruit Company property. The property line adjustment reduced the site to its current size of 0.10-acre (4,356 square feet).

ii. The site was zoned SR (Suburban Residential) on October 17, 1972. The SR zone provided for variable minimum lot sizes ranging between 10,000 – 40,000 square feet, depending on what public services were available.

iii. The property line adjustment reduced the size of the site below the 10,000 square foot minimum lot size requirement of the SR zone. Therefore, the site does not qualify as a Lot of Record, because it did not comply with all applicable zoning laws at the time it was reconfigured into its current dimensions.

b. Ms. Thomas noted that the 1972 property line adjustment satisfied all applicable land division laws at the time the site was created and at the time it was reconfigured. However, the property did not meet all applicable zoning laws in effect in 1972, when the site was reconfigured into its current dimensions; the property line adjustment reduced the size of the site below the minimum lot size requirement of the SR zone in effect at the time the site was reconfigured. Property line adjustments were not exempt from minimum lot size requirements. Section 3.1531 of the 1972 Code (Exhibit B.4) sets out the minimum lot size requirements for the SR zone.

i. She argued that the phrase, “if applicable” in MCC 39.3005(B)(a) means if the lot or parcel was reconfigured.¹ Not whether lot size requirements apply.

3. Planner Don Kienholz and applicant Brian Stevens appeared on behalf of the property owners, Brian and Trisha Stevens.

a. Mr. Kienholz summarized his “Appeal Hearing Narrative” (Exhibit H.6) and his past experience as a Multnomah County planner.

i. He noted that the site was previously part of a 20-acre parcel, the majority of which was located north of SE Dodge Park Boulevard. A warranty deed recorded in 1908 (Exhibit A.3) divided and conveyed the portion of the 20-acre parcel located south of SE Dodge Park Boulevard as a separate 0.52-acre parcel as shown in Exhibit H.1. In 1972, the 0.52-acre parcel was reconfigured through a property line adjustment. The western 0.42-acres of the 0.52-acre parcel was conveyed to Scenic Fruit Company and incorporated into the adjacent Scenic Fruit Company property (Exhibit A.6).

ii. The 1972 deed accomplished a property line adjustment, not a land division. A land division creates lots or parcels, citing to the definitions of the terms, “Lot” and “Parcel” in MCC 39.2000, MCC 39.9055, and ORS 92.010(4) and (6). Property line adjustments reconfigure the boundaries between existing lots or parcels without creating new lots, citing ORS 92.010(12). The 1972 deed did not create any new parcels. It merely reconfigured two existing parcels; there were two parcels before the property line adjustment and two parcels after (Exhibit H.1).

iii. Neither State law nor the County Code regulated property line adjustments in 1972. State law did not define property line adjustments until ORS 91.190(3) was adopted in 1991 (Exhibit H.3). The County did not regulate property line adjustments until Ordinance 781 was adopted in 1994 (Exhibit H.4). Staff argue that because the Code in effect in 1972 did not provide for property line adjustments, they were prohibited (Exhibit H.2). However, the County has repeatedly recognized

¹ For purposes of this decision the hearings officer uses the terms “lot” and “parcel” interchangeably to refer to a unit of land regardless of how the unit of land was created or modified.

parcels modified by property line adjustments occurring prior to 1994 as lots of record (Exhibit H.5). Numerous property line adjustments occurred in the County that did not comply with minimum lot size requirements. To prohibit the recognition of parcels modified through property line adjustments that did not meet minimum lot size requirements would result in “thousands of illegal lots” in the County. From 1974 on, the average lot size in the County ranged from five- to 20-acres, yet many properties were adjusted that were below the minimum lot size (Exhibit H.5).

iv. Section 3.1538 of the Code in effect in 1972 acknowledged property line adjustments, prohibiting transactions where a structure on a “remainder lot” does not meet setback requirements. Section 3.1542 of the 1972 Code acknowledged the existence of legal lots smaller than the minimum lot size, allowing development on existing lots smaller than the minimum lot size of the SR zone.

v. Land divisions were subject to minimum lot size requirements, because they actually create a new unit of land. However, land divisions were not subject to yard dimensional standards, as discussed in Exhibit H.8. Property line adjustments are not subject to minimum lot size requirements, because no new units of land are created. Property line adjustments merely reconfigure existing units of land. However, property line adjustments are subject to yard dimensional standards, based on Section 3.1542 of the Code in effect in 1972.

vi. The County has never subjected property line adjustments to minimum lot size requirements. Prior to 1994, the County did not regulate property line adjustments and there were no standards requiring evaluation with minimum lot size requirements. Between 1994 and 2001, property line adjustments were not required to meet minimum lot size requirements, citing Section 11.45.115(B) and (C) of the Code in effect during that period. 11.45.115(B) expressly allowed property line adjustments “[w]here one or both of the adjusted properties are below the minimum lot area [of the zone].” Section 11.45.115(C) provided, “The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.” The Code in effect between 2001 and 2019 included similar language and did not require compliance with the minimum lot size, citing Section 36.7970(B) of the Code in effect between 2001 and 2019. The current Code, MCC 39.4330(B) adopted in 2019, does not require compliance with minimum lot size requirements. The current Code standards are only intended to preclude the creation of parcels that can be further divided.

vii. The County argues that lots smaller than the minimum lot size could only be approved through a zone change pursuant to Section 3.830 of the Code in effect in 1972. This section refers to “district boundaries,” which are equivalent to zoning boundaries and regulates zone changes/zoning map amendments. The County never required such a zone change approval to permit a property line adjustment that reduced a parcel below the minimum lot size of the zone.

vii. Partitions were not listed in state law or the County Code in 1972, when this property line adjustment occurred. Partitions were not included in State law until 1973, Exhibit H.7. The 1973 version of ORS 92.010(7) provided, in relevant part, that the term “partition land” “[d]oes not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning ordinance.” p 3 of Exhibit H.7. However, the 1972 property line adjustment predated the adoption of this provision. Therefore, it does not apply to this property line adjustment. In addition, Section 3 of Oregon Laws 2008, codified in ORS 92.010(9)(b), eliminated the minimum lot size requirement and allowed property line adjustments

below the minimum lot size. Section 6 of Oregon Laws 2008 states that this provision applies retroactively to all previously approved property line adjustments. LUBA confirmed the retroactive effect of this provision in *Landwatch Lane Cnty. v. Lane Cnty.* (Or. LUBA, 2018, LUBA No. 2017-125).

ix. The current definition of “lot of record” in MCC 39.3005(B) distinguishes between the “creation” and “reconfiguration” of a lot or parcel.

(A) In order to constitute a lot of record, the lot or parcel must have been created in compliance with all applicable zoning and land division laws, citing MCC 39.3005(B)(a). Lots are “created” through land divisions. The phrase, “[i]f applicable, reconfigured...” in MCC 39.3005(B)(a) establishes different standards for property line adjustments.

(B) The County determined in Case File T2-2106-5087 (Exhibit H.8) that land divisions are not subject to all lot dimensional standards. Land divisions are only subject to minimum lot size requirements; yard distances are inapplicable. Conversely, that means that property line adjustments are not subject to minimum lot size requirements but they are subject to yard requirements. The Code expressly prohibits property line adjustments where the relocated property line is within the setback of a building.

(C) Property line adjustments are only subject to the standards that applied when the adjustment occurred. Property line adjustments were not subject to zoning minimum lot size, dimensional standards, and access requirements in 1972, when the property was reconfigured. Lot size requirements were not imposed on property line adjustments until the current Code, which prohibits the reconfiguration of lots to allow further division of the lot. In his experience as a County planner, lot size was never a consideration for property line adjustments. The County’s decision in Exhibit H.9 (T2-2012-2530) recognized multiple property line adjustments for lots below the minimum lot size, which occurred prior to adoption of the 1994 property line adjustment requirements. The County’s decision in this case is completely opposite the County’s past practice.

b. Mr. Stevens noted that the Code prohibits the placement of homes on any lot below 10,000 square feet. This provision would not exist if there no lots were created or reconfigured below the minimum lot size.

4. At the end of the hearing the hearings officer closed the record and took this matter under advisement.

C. DISCUSSION

1. MCC § 37.0330.B authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. The hearings officer is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The hearings officer must decide whether the applicant have carried the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence submitted during the appeal process.

2. The hearings officer finds that the Staff Report identifies all of the applicable approval standards. The hearings officer adopts the affirmative findings in the Staff Report as his own except to the extent that those findings conflict with the findings and conclusions in this final order.

3. MCC 39.3005 provides:

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**
 - 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
 - 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

Applicable Zoning Laws

4. To qualify as a Lot of Record, the site, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

5. To satisfy all applicable zoning laws at the time of creation, the site must have been created in full compliance with all zoning minimum lot size, dimensional standards, and access requirements. MCC 39.3005(B)(a).

a. The applicant submitted a recorded deed from March 24, 1908 describing an approximately 0.52 acre (22,651.2 square foot) property (Exhibit A.3), a portion of which would later be divided off to form the site. At the time of recording of the aforementioned deed, zoning regulations were not yet in effect and there were no minimum lot size requirements. The applicant also provide a recorded deed from April 27, 1971, (Exhibit A.4) that contains a matching legal description that describes an approximately 22,651 square foot property.

b. On October 17, 1972, a Warranty Deed was recorded in Book 888, Page 447-448 (Exhibit A.6) which conveyed a portion of the original 22,651 square foot property to the Scenic Fruit Company's property known as tax lot 1S4E21C - 00100. The deed to Scenic Fruit Company described the existing Scenic Fruit Company property and the portion of the 22,651.2 square foot property conveyed in a single legal description. The 1972 transfer did not create any new units of land. Therefore, the 1972 transfer was a property line adjustment, not a land division. Through recording the aforementioned 1972 deed, the site was created as a remainder lot at its current size of approximately 4,356 square feet. Image #1 below is a graphic created by the applicant that highlights the creation of the approximately 4,356 square foot site from the larger 22,651 square foot property in 1972 (Exhibit A.7). See also, Exhibit H.1.

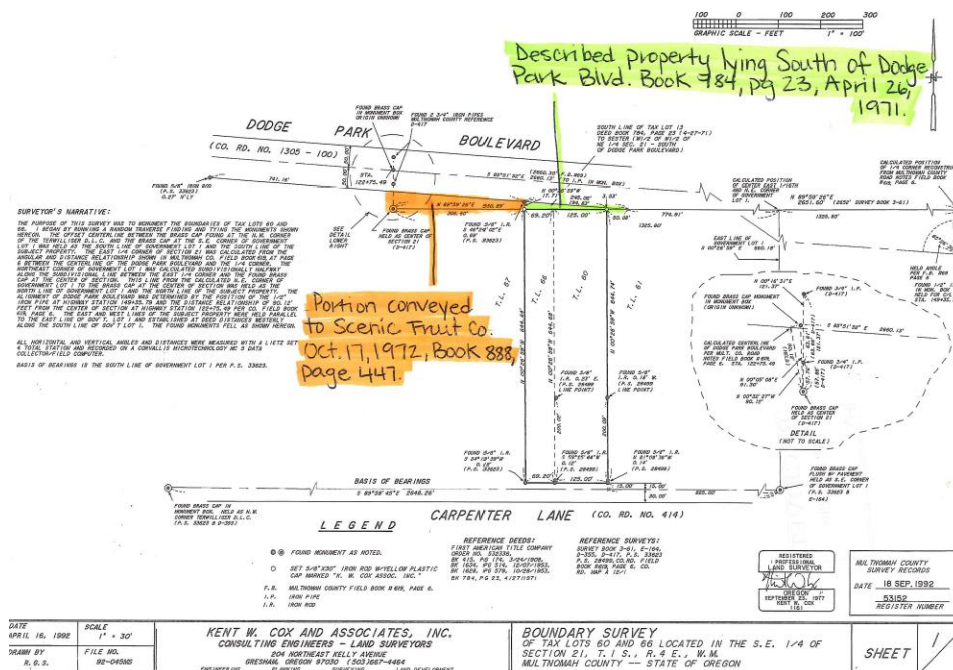


Image #1 – September 18, 1992 Survey (Exhibit A.7)

c. At the time of recording of the 1972 deed creating the 4,356 square foot site, the zoning in the area was Suburban Residential ('SR'). Section 3.1531 of Multnomah County Code provided for variable minimum lot sizes ranging between 10,000 – 40,000 square feet in the SR zone.

(Exhibit B.4). The minimum lot size was dependent on the available services in the area. (Exhibit B.3 – B.4). Image #2 below is a graphic from the 1962 Zoning Map for 1S4E21DB showing the area being zoned SR (Exhibit B.3). Staff utilized an orange rectangle to identify the area on the map showing the parent parcel.

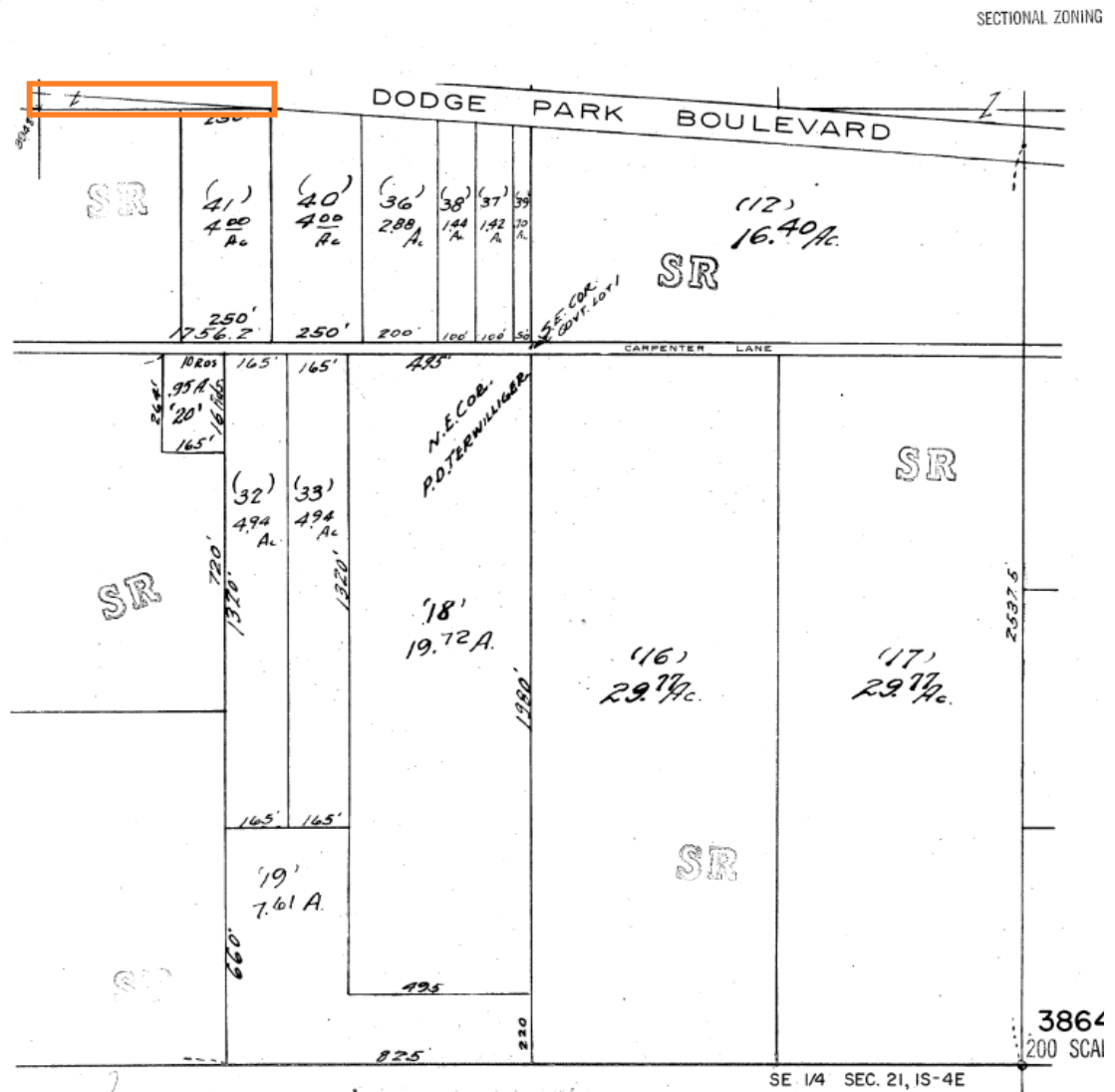


Image #2 – 1962 Zoning Map for 1S4E21DB (Exhibit B.3)

d. The 22,651.2 square foot parent property met the minimum lot size requirements of the SR zone in effect in 1972. However, the property line adjustment reconfigured the parent property, resulting in the approximately 4,356 square foot site. The reconfigured site did not meet the 10,000 square foot minimum lot size required in the SR zone in effect at that time. The 1972 property line adjustment modified a unit of land that met minimum lot size requirements of the SR zone in effect at that time, resulting in a unit of land that was smaller than the minimum lot size where none existed before. Therefore, the site did not meet the minimum lot size of the SR zone when it was reconfigured and hence did not satisfy all applicable zoning laws at that time.

i. As noted in the Staff Report, a district boundary change (zone change) was required to legally create or reconfigure a property less than 10,000 square feet in size in accordance with the applicable the SR zone in effect in 1972. Section 3.1531(b) in the SR zone stated, “Any

further reduction in lot sizes shall require a change in district boundary. (Section 8.30). Such change may be considered on the basis of established character and community facilities in addition to the above.” (Exhibit B.4 and B.6). The hearings officer interprets this provision to prohibit the creation of new lots smaller than the minimum lot size unless and until the zoning for the property is changed to another zoning designation that allows smaller lots. It does not *per se* subject land divisions or property line adjustments to review through the zone change process. The applicant did not provide any documentation that a “change in district boundary,” *i.e.*, a zone change, was completed at the time of creation of the site in 1972 (Exhibit A.1 – A.8), and planning staff found no evidence in the County records that the property was rezoned from the SR district at that time.

6. The hearings officer agrees that the County has consistently recognized units of land that were reconfigured through a property line adjustment prior to 1994, when the County adopted procedures regulating such transactions, as lots of record. See e.g., Exhibit H.5, H.9, and H.10.

7. However, such historic property line adjustments were subject to the minimum lot size requirements of the Code in effect when the adjustments occurred. Compliance with minimum lot size standards is an explicit requirement of the “Lot of Record” definition in MCC 33.0005.

a. To qualify as a lot of record a unit of land must have satisfied all applicable zoning laws when it was created or reconfigured. MCC 33.0005(B). MCC 33.0005(B)(a) defines the phrase, “satisfied all applicable zoning laws” to require that the unit of land was created or reconfigured in full compliance with minimum lot size requirements.

b. The fact that County approval of property line adjustments was not required prior to 1994 does not exempt such actions from the minimum lot size requirements. Partitions were not regulated by the County until after 1973, yet lots created by partition were subject to minimum lot size requirements. Property line adjustments are no different. This is consistent with prior County decisions, requiring that property line adjustments meet minimum lot size requirements in order to qualify as lots of record. See e.g., p. 6 of Exhibit H.10 (“As was typical during this time, the recording of deeds was the only mechanism to adjust common property lines but the reconfigured parcels or units of land had to meet the minimum lot size and access requirements for the zone.”) and p. 8 of Exhibit H.5 (Finding that a lot modified by a property line adjustment in 1964 was subject to and complied with minimum lot size requirements).

8. The hearings officer finds that the phrase “if applicable” in the definition of “Lot of Record” refers to whether or not a property line adjustment occurred. It does not, as the applicant asserts, impose different standards for land divisions and property line adjustments. This provision requires a finding that the unit of land was created in full compliance with minimum lot size requirements and, *if a property line adjustment occurred*, the reconfigured unit of land was in full compliance with minimum lot size requirements. The applicant’s interpretation, that this phrase creates different standards for property line adjustments, is not supported by the plain meaning of the words in the Code.

a. Contrary to the applicant’s assertion, the County’s decision in Case File T2-2016-5087 (Exhibit H.8) does not support the applicant’s interpretation that the phrase “if applicable” in MCC 39.0005 means that land divisions are subject to minimum lot size requirements but exempt from setback and other dimensional requirements, while property line adjustments are exempt from minimum lot size requirements but subject to setback and other dimensional requirements.

i. This decision interpreted the definition of “Lot of Record” in MCC 33.0005. The director determined that, “[t]he term “dimensional standards” does not refer to *all* dimensional standards in the Code, but only to those dimensional standards that regulate parcel configuration: “*the parcel* *** was created *** in full compliance with all zoning *** dimensional standards. MCC 33.005.” p. 5 of Exhibit H.8 (emphasis in original).

ii. The same reasoning applies to properties modified by a property line adjustment. Whether the current form of the property at issue was established by a land division or property line adjustment, the term “dimensional standards” does not refer to all dimensional standards in the Code, but only to those dimensional standards that regulate parcel configuration. In the case of a unit of land modified by a property line adjustment the definition of “Lot of Record” is properly read as, “Satisfied all zoning laws’ shall mean: the parcel *** was *** reconfigured in full compliance with all zoning, minimum lot size, dimensional standards, and access requirements.

9. The County has also recognized as lots of record parcels modified by property line adjustments where the parcel reduced in size was smaller than the minimum lot size required by zoning in effect prior to the property line adjustment and the post adjustment lot was smaller still. Such an adjustment merely retains the existing status quo; a nonconforming lot existed before the adjustment and continues to exist after the adjustment. It does not produce a lot that does not comply with the minimum lot size where none existed before.

a. This is consistent with the 1994 Code. MCC 11.45.115(A) authorized the approval of property line adjustment where the existing parcel reduced in size is not reduced below the minimum lot size. MCC 11.45.115(B) authorized the approval of property line adjustments in the rural area “where one or both of the adjusted properties are below the minimum lot size...” (emphasis added). In this case, neither of the parcels involved in the 1972 property line adjustment were below the minimum lot size prior to the adjustment. The property line adjustment resulted in a parcel that was smaller than the minimum lot size where none existed before. MCC 11.45.115(C)(3) provides that property line adjustments are not subject to minimum lot size requirements, *provided* they meet the standards of MCC 11.45.115(A) or (B). In this case the 1972 property line adjustment did not comply with either MCC 11.45.115(A) or (B). Therefore, the minimum lot size exemption in MCC 11.45.115(C) would have been inapplicable.

a. The hearings officer acknowledges that the 1972 lot line adjustment was not subject to MCC 11.45.115, because that provision was not in effect at the time the lot line adjustment occurred. The hearings officer is merely responding to the applicant’s argument that the later adopted Code did not require that property line adjustments comply with the Code.

10. Section 6 of Chapter 12 of Oregon Laws 2008 did not retroactively approve the 1972 property line adjustment. Section 6 only applies to “[p]roperty line adjustments *approved* before, on or after the effective date of this 2008 Act.” (Emphasis added). In this case, the County did not approve the 1972 property line adjustment. The adjustment occurred prior to the adoption of regulations requiring County review and approval of property line adjustments. Therefore, Section 6 of Chapter 12 of Oregon Laws 2008 is inapplicable.

Applicable Land Division Laws

11. In 1972, the process to divide a property into two new units of land was to write up new legal descriptions and record a new deed or contract that utilized the new description. The property

owner at that time did utilize the correct land division process and satisfied all applicable land division laws at that time (Exhibit A.6). There were no County laws regulating property line adjustments in 1972.

12. Based on the information discussed above, the creation of this parcel in 1972 did satisfy all applicable land division laws, but did not satisfy all applicable zoning laws at the time. Therefore, the site does not qualify as a Lot of Record.

13. MCC 39.3080 provides:

Lot of Record – Multiple Use Agriculture – 20:

- (A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**
 - (1) July 10, 1958, SR zone applied;**
 - (2) July 10, 1958, F-2 zone applied;**
 - (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
 - (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
 - (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
 - (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

- (B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

- (C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

- (D) The following shall not be deemed to be 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) An area of land created by court decree.**

14. As discussed above, the site is not a Lot of Record. Therefore, the provisions of MCC 39.3080(A) and (B) are not applicable.

15. The site is vacant and there are no current land use decisions or permits approving a structure on the site. Therefore, MCC 39.3080(C) is inapplicable.

16. The site was not created by the foreclosure of a security interest or a court decree and is not an area of land described solely for assessment and taxation purposes. Therefore, MCC 39.3080(C) is met.

D. CONCLUSION

The hearings officer concludes that the site does not qualify as a Lot of Record, because the 1972 property line adjustment reduced the site below the minimum lot size required for the SR zone in effect at that time.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby denies the appeal and affirms the planning director's decision in Case File T2-2019-11865.

DATED this 27th day of November 2019.



Joe Turner, Esq., AICP
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'H' Hearing 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 T2-2019-11865 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Application Form	04.17.2019
A.2	3	Applicant Narrative	04.17.2019

A.3	1	Deed Record recorded March 24, 1908	04.17.2019
A.4	1	Warranty Deed recorded on April 27, 1971 in Book 784, Page 23	04.17.2019
A.5	1	Survey no. 53152 recorded on September 18, 1992 with highlights	04.17.2019
A.6	1	Warranty Deed recorded on October 17, 1972 in Book 888, Page 447-448	04.17.2019
A.7	1	Survey no. 53152 recorded on September 18, 1992 with highlights	04.17.2019
A.8	1	Personal Representative's Deed recorded on May 25, 2000 as Instrument # 2000-072903	04.17.2019
A.9	1	Survey no. 33623 recorded on May 22, 1971	04.17.2019
A.10	1	Bargain and Sale Deed recorded on August 07, 2019 as Instrument no. 2019-081911	08.08.2019
'B'	#	Staff Exhibits	Date
B.1	1	A&T Property Information	04.17.2019
B.2	1	Email from Michael Cerbone (former Planning Director) describing fee waiver.	04.17.2019
B.3	1	1962 Zoning Map for 1S4E21DB	04.17.2019
B.4	6	Suburban Residential (SR) zoning regulations - Zoning Ordinance 100 as amended effective May 21, 1968	04.17.2019
B.5	3	Parcel Record Card for 1S4E21DB -00900	04.17.2019
B.6	11	General Provisions – section 8.0 of Zoning Ordinance 100 as amended effective May 21, 1968	04.17.2019
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	05.15.2019
C.2	1	Applicant Response	06.18.2019
C.3	1	Complete Letter (Day 1)	07.10.2019
C.4	5	Opportunity to Comment	08.29.2019
C.5	19	Administrative Decision	09.19.2019
C.6	3	Notice of Appeal	10.01.2019
C.7	5	Hearing Notice	10.22.2019
'H'	#	Hearing Exhibits	Date
H.1	1	Map illustrating 1972 conveyance	N/A

H.2	1	Emails between applicant and staff	9/19 & 9/25/19
H.3	4	Portion of ORS 92, 1991 Edition	1991
H.4	4	Portion of Mult. Co. Ordinance No 781	1/27/1994
H.5	8	Notice of Decision, Mult. Co. Case File T2-05-042	8/12/2005
H.6	8	Applicant's Appeal Hearing Narrative	11/15/2019
H.7	3	Portion of ORS 92, 1973Edition	1973
H.8	13	Notice of Decision on Reconsideration, Mult. Co. Case File T2-2016-5087	6/23/2017
H.9	8	Notice of Decision, Mult. Co. Case File T2-2012-2530	4/18/2013
H.10	10	Notice of Decision, Mult. Co. Case File T2-2019-12283	10/24/2019
H.11	2	Portion of Mult. Co. Ordinance No 174	10/19/1978