
DECISION OF HEARINGS OFFICER

Case File:	T2-2019-12608		
Permit:	Lot of Record Determination		
Applicant(s):	Joseph Rayhawk	Owner(s):	Joseph & Shelley Rayhawk
Location:	15248 NW Germantown Road Tax Lot 800, Section 08D, Township 1 North, Range 1 West, W.M. Tax Account #R961080160 Property ID #R323981		
Zoning:	Exclusive Farm Use (EFU)		
Overlays:	Significant Environmental Concern – wildlife habitat (SEC-h); Streams (SEC-s); Geologic Hazards (GH)		
Proposal Summary:	The Applicant requests a Lot of Record Verification for the subject property. This decision will determine if the current configuration of the subject property met the zoning and land division laws at the time of creation or reconfiguration. The application does not propose any development; hence, a GH, SEC-h, and/or SEC-s permit are not necessary.		
Decision:	The subject property (1N1W08D -00800) is a Lot of Record in its current configuration.		

A. SUMMARY

1. Property owner Joseph Rayhawk (the “applicant”) filed an application for verification that Tax Lot 800, 08D, Township 1 North, Range 1 West of the Willamette Meridian, a 33.737+/- acre parcel located at 15248 NW Germantown Road (the “site”) constitutes a Lot of Record as defined by Section 39.0005 and 39.3070 of the Multnomah County Code (the “MCC”). The site is zoned EFU (Exclusive Farm Use).

2. On January 16, 2020, the planning director (the “director”) issued a written decision determining that the site is a Lot of Record in its current configuration. (the “director’s decision,” Exhibit C.3)

3. Brian Stevens filed a written appeal of the director’s decision on January 30, 2020 (Exhibit C.4).

4. County Hearings Officer Joe Turner (the "hearings officer") conducted a duly noticed public hearing to receive testimony and evidence regarding the appeal. The applicant, the appellant’s representative, and County staff testified orally and in writing regarding the appeal. Contested issues in this case include:

- a. Whether the appellant has standing to file an appeal of the director’s decision;

b. Whether the 1979 Lot of Exception and 1981 and 1982 Exempt Lot of Record decisions are final decisions that are not subject to collateral attack in this proceeding;

c. Whether the hearings officer has jurisdiction to reconsider the final order in T2-2019-11865 (Stevens Lot of Record) in this proceeding; and

d. Whether the 2008 Circuit Court judgement “created” an area of land.

5. Based on the findings provided or incorporated herein, the hearings officer hereby concludes that the site qualifies as a lot of record. Therefore, the hearings officer denies the appeal and affirms the planning director’s decision in Case No. T2-2019-12608 (Rayhawk Lot of Record).

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this appeal on February 21, 2020. 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 Oregon Revised Statute (“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 Lisa Estrin appeared on behalf of the County.

a. She questioned whether the appellant has standing to appeal this decision pursuant to ORS 215.416 and MCC 39.1160.A(4). MCC 39.1160.A(4) limits standing to, “[t]hose who are entitled to notice under MCC 39.1150.”

b. In December 1979, when the site and surrounding properties were zoned MUA-20 (Multiple Use Agriculture), the County approved Land Use Case #LE 4-80 (Exhibit B.2), which approved the creation of a 34.194-acre parcel (the current site) and a 2.002-acre “Lot of Exception,” located at 15036 NW Germantown Road. The 2.002-acre “Lot of Exception” was actually created in January 1981 when the County approved an Exempt Minor Partition (Exhibit B.3) dividing the site into two separate parcels. A deed for the Lot of Exception was recorded in June 1981.

c. In October 1982 the County approved a second Exempt Minor Partition, (Exhibit B.3) that reconfigured the boundaries of the parcels created by Case #LE 4-80 and the 1981 partition without changing the size of the parcels (Exhibit B.4).

d. The 1981 and 1982 County decisions determined that the Exempt Minor Partitions complied with the zoning and land division standards in effect at the relevant times and confirmed the legality of these lots.¹

e. A 2008 Circuit Court judgment (Exhibit A.6) clarified the boundary between the site and the abutting property to the west, 15610 NW Germantown Road, also known as 1N1W08C-00500

¹ The term “lot” generally refers to units of land created by subdivision. Units of land created by partition are identified as “parcels.” However, for the sake of simplicity, because this proceeding involves review of a “lot of record,” the hearings officer uses the term “lot” to refer to the units of land at issue, even though the units of land were created by partitions.

(tax lot 500). The Court determined that the west boundary of the site was relocated to the east by adverse possession occurring sometime between 1936 and 1956. The resulting lot line adjustment reduced the size of the site to 33.737-acres +/- . The property line was modified by adverse possession prior to the effective date of County zoning and land use regulations. Therefore, no County review of the boundary change was required.

f. The owner of the site on February 20, 1990, did not own any other contiguous parcels or lots on that date. Therefore, the site was not subject to the aggregation requirements of MCC 39.3070(A).

g. The fact that the deeds for the 1981 Exempt Minor Partition , which implemented the 1979 Lot of Exception, were not stamped or recorded for more than one year after the date of the decision approving the Lot of Exception is irrelevant. The one-year recording requirement cited by Mr. Kienholz is a subdivision standard. Exempt minor partitions were expressly exempt from subdivision regulations. The Lot of Exception approval was a zoning decision that was also exempt from subdivision regulations. The Lot of Exception decision did not include an expiration date and the decision was completed by recording of new deeds implementing the Lot of Exception and exempt minor partitions were recorded prior to January 1, 2003, when MCC 39.1190 caused any prior uncompleted decisions to expire.

h. The 1981 and 1982 exempt minor partition decisions both reference the 1979 decision, LE 4-80, and note that the planner found that the applications complied with the zoning criteria based on the prior decision. The new deeds reconfigured the lots created by the 1979 decision.

i. The appellant's lot of record application, Case T2-2019-11865 (Stevens) is not currently before the examiner. The facts in that case were different than those in this case. The lot line adjustment in the appellant's case was not reviewed and approved by the County before it was recorded. In this case, the lot of exception and the subsequent lot line adjustment were all reviewed and approved by the County.

j. The 2008 Court decree did not create or modify any parcels in 2008. It merely recognized that title to the disputed parcel had transferred sometime between 1936 and 1956. Therefore, the site's parent parcel never included that area.

k. She requested the hearings officer hold the record open to allow the County an opportunity to respond to the appellant's' submittal.

3. The applicant, Joe Rayhawk, summarized his written testimony, Exhibit H.1. He also submitted a map illustrating the current site, the area lost in the 2008 adverse possession case, and the two-acre parcel created by the 1979 partition (Exhibit H.2).

a. He noted that the 2008 Court decision merely recognized the existing condition of the site; that the size of the site was reduced by adverse possession occurring sometime between 1936 and 1956, before the effective date of any County zoning or land use regulations.

b. The prior owner of the site was a friend of Governor Atiyeh and may have obtained legislative approval of the 1979 lot of exception.

c. The Oregon House recently passed HB2014, which requires that Counties grant lot of record status for parcels created through adverse possession.

4. Planner Don Kienholz appeared on behalf of the appellant, Brian Stevens and summarized his written testimony, Exhibits H.9 and H.10.

a. He argued that the appellant has standing to appeal pursuant to ORS 215.416(11)(a)(A) as a “[p]erson who is adversely affected or aggrieved...” by the director’s decision. The County’s appeal form (Exhibit C.4) provides that persons aggrieved or impacted by the decision have standing to appeal. The appellant is aggrieved by the County’s decision, because the County relied on a different interpretation of the lot of record ordinances when it denied the appellant’s prior lot of record request in Case T2-2019-11865 (Exhibit H.3).

b. The facts in this case are nearly identical to the facts in the appellant’s lot of record application, Case T2-2019-11865 (Stevens). If the property at issue in Case T2-2019-11865 was not a lot of record, than the site is not a lot of record on the same basis.

i. The County denied the appellant’s lot of record application, Case T2-2019-11865 (Stevens), based on findings that the property did not meet all applicable zoning laws in effect when the site was reconfigured into its current dimension. The County concluded that the reconfigured property did not meet minimum lot size requirements and the prior lot line adjustments were not exempt from minimum lot size requirements.

ii. In this case, the director’s decision made no findings regarding compliance with minimum lot size, access, or dimensional standards in effect when the Exempt Minor Partitions were reviewed and approved. MCC 39.3005.B(A) requires such a finding. The site cannot qualify as a lot of record unless it complied with the applicable zoning requirements at the time it was created.

c. The County’s 1981 and 1982 decisions in this case were identified as Exempt Minor Partitions. Exempt Minor Partitions were not land use decisions or County approvals that are protected from collateral attack. These “decisions” were merely the County’s recognition and acknowledgment that the proposed land divisions were not subject to County subdivision review, citing Section 1.224 of the 1978 version of the County Code in effect in 1979. The Code did not identify Exempt Minor Partitions as a type of approval. The County merely stamped the partition plan and legal descriptions as Exempt Minor Partitions citing LE 4-80. There are no written findings of compliance with zoning, minimum lot size, access, etc. The 1981 and 1982 land divisions did not meet the Lot of Exception standards of Section 3.104.1 or the Conditional Use criteria in 3.104.3 of the County Code in effect at that time. Therefore, the site did not comply with zoning requirements in effect at the time it was created.

d. The 1979 Lot of Exception decision violated the County Code and was void before it was ever initiated.

i. Nothing in the Code in effect in 1979 exempted the land division from minimum lot size and other dimensional standards. Section 3.134.13 of the 1978 Code allowed lots of exception that will not increase the number of dwellings allowed in the zone. Zoning in effect at that time required a minimum lot size of 20-acres. The parent parcel would have had to include 40-acres or more in order to meet this standard. The roughly 36-acre parent parcel that existed in 1979 could not

be developed with two dwellings. Therefore, the resulting land division did not comply with this standard.

ii. In addition, Section 1.381 of the 1978 Code required the submittal of a final partition plan map within one year from the date of the decision approving the tentative partition plan. The County issued the decision in LE 4-80 on December 21, 1979. The survey for this land division was not stamped by the County until January 12, 1981, and the deeds were not recorded until June 1981, more than one year after the date of the County's decision in LE 4-80. Therefore, the 1979 decision was void, because the partition plan and deeds implementing the decision were not submitted to the County within one year from the date of the decision.

e. The County approved a lot line adjustment as an exempt minor partition in 1982 (Exhibit B.4), after the site was rezoned from MUA-20 to EFU-38 on August 12, 1980.

i. Neither of the parcels involved in that exempt minor partition complied with the 38-acre minimum lot size in effect at the time the County approved the lot line adjustment. The Code in effect at the time did not provide an exception from minimum lot size requirements. The County's 1982 decision did not include findings regarding compliance with minimum lot size, dimensional standards, or access requirements. The "decision" consisted of legal descriptions and a map that were stamped by the County (Exhibits B.4 and H.7).

f. The director's decision in Case T2-2019-12608 ignored MCC 39.3070.D, which provides that an area of land created by court decree is not a lot of record. The Court's 2008 adverse possession judgment was a "court decree" that resulted in a land division, creating a distinct 0.5-acre parcel based on the legal description included in the judgment. In the alternative, the Court decision resulted in a lot line adjustment. The decision required the transfer of a portion of the site to the adjacent property. However MCC 39.4255.A.3.b prohibits lot line adjustments that do not result in an equal area exchange.

4. At the end of the hearing the hearings officer held the record open for one week for all parties to submit new testimony and evidence. The hearings officer held the record open for a second week to allow the applicant an opportunity to submit a final written argument, without any new evidence. The record in this case closed at 5:00 p.m. on March 6, 2020.

C. DISCUSSION

1. MCC § 39.1110(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 director's decision identifies all of the applicable approval standards. The hearings officer adopts the affirmative findings in the director's decision as his own except to the extent that those findings conflict with the findings and conclusions in this final order.

STANDING

3. The hearings officer finds that the appellant has standing to file an appeal of the director's decision.

a. MCC 39.1160(A)(4) provides, "Standing to Appeal. Those who are entitled to appeal a Type II or Type IV decision include those who are entitled to notice under MCC 39.1150." MCC 39.1150 requires notice of hearings "[t]o those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice." MCC 39.1150 sets out the requirement for hearing notices. Therefore, the hearings officer finds that the phrase, "such notice" in this section must refer to the hearing notice.

b. The hearings officer finds that the appellant identified himself in writing as aggrieved or potentially aggrieved or impacted by the decision by filing the appeal. The appellant filed the appeal with the County prior to the County's mailing of the hearing notice. Therefore, the appellant was entitled to notice of the appeal hearing pursuant to MCC 39.1150 and the appellant has standing to appeal pursuant to MCC 39.1160.A(4).

i. The Code does not require that the appellant demonstrate that they are actually aggrieved by the decision. MCC 39.1150 provides that persons who have identified themselves potentially aggrieved or impacted by a decision are entitled to notice and MCC 39.1160(A)(4) grants standing to those entitled to notice under MCC 39.1150. However, the hearings officer finds that the appellant is 'aggrieved' by the decision in this case. The appellant is more than abstractly dissatisfied with the outcome of the County's decision. The decision is contrary to the position the appellant espoused during review of his own prior application and appeal. *Jefferson Landfill Committee v. Marion County*, 297 Or. 280, 284, 686 P.2d 310 (1984).

c. The hearings officer acknowledges that the above interpretation creates a somewhat circular definition of "standing." However, the circularity is created by the language of the Code, which grants standing to those entitled to notice of hearings and requires notice of hearings to persons who identify themselves in writing as "[a]ggrieved or potentially aggrieved or impacted by the decision..." prior to mailing of notice of the appeal hearing. The hearings officer assumes that the County intended to require persons to identify themselves as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of notice of the initial application or the director's decision. But that is not what the Code provides.

LOT OF RECORD

4. 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 lot line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of lot line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

5. 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. The applicant is not required to demonstrate compliance with the laws in effect when the site was created. The applicant is only required to establish that the County approved the creation of the lot. Any procedural or substantive errors the County might have made in issuing that approval are not a basis to conclude that the unit of land is not a lawful lot or parcel. *Landwatch Lane Cnty. v. Lane Cnty.*, p. 10-11 (LUBA No. 2018-078).

1979 LOT OF EXCEPTION

6. In December of 1979, the County made an administrative decision, Land Use Case #LE 4-80, on a 36.72 +/- acre parcel (the “parent parcel”) in the Multiple Use Agriculture – 20 (MUA-20) zone. In the decision, the County authorized the creation of a 34.194 acre parcel, now the site, and a 2.002 +/- acre substandard ‘Lot of Exception’ (15036 NW Germantown).

a. The MUA-20 zone that applied to the site and surrounding areas in 1979 required a minimum lot size of 20-acres. *See* Section 3.134.a of the Code in effect in 1979 (p. 38 of Exhibit H.6).² However, Section 3.134.1 of the 1979 Code allowed the creation of lots less than 20-acres when approved as “lots of exception.” (*Id.*).

b. In 1979, the County initially questioned whether the application could comply with the approval criteria for a lot of exception. (See the “pre-filing conference minutes,” p. 25 of Exhibit B.2). However, the County eventually determined that the application complied with the applicable approval criteria and approved the application. (p.1 of Exhibit B.2). The director expressly found that the application complied with Section 3.134.13, that approval of the lot of exception would not increase the permitted number of dwellings above what otherwise would be allowed in the district. The decision states, “[t]he number of permitted dwellings not thereby increased above that otherwise allowed in the district because the original tract plus portion of road is ¼ of ¼ of the section in this area...” (p.1 of Exhibit B.2). The lot of exception complied with the access requirements of Section 3.137 of the 1979 Code, as both lots abutted NW Germantown Road. (Exhibits B.3 and B.4). Whether these determinations were correct at the time is irrelevant. The 1979 Lot of Exception decision was not appealed and is now final. Therefore, it is not subject to collateral attack in this proceeding.

1981 EXEMPT MINOR PARTITION

7. In 1981 the applicant’s predecessors in interest submitted to the County a partition plan implementing #LE 4-80, the 1979 Lot of Exception decision. Although the 1981 partition created a parcel smaller than the standard minimum lot size, the smaller parcel was expressly permitted by the prior Lot of Exception decision. Therefore, the resulting lot did comply with the zoning laws in effect when it was created, based on the County’s prior decision in #LE 4-80. The County reviewed the proposed land division and expressly determined that it qualified as an Exempt Minor Partition. The County stamped and signed the partition plan stating that it was Exempt Minor Partition implementing #LE 4-80. (Exhibits B.3).

8. The appellant’s assertion that the 1981 partition did not comply with the applicable approval criteria in effect at those times is an impermissible collateral attack on the prior, un-appealed, final decision.

a. The appellant asserts that the 1981 Exempt Minor Partition is not a final decision, that an Exempt Minor Partition “is not a thing” and the County stamp means nothing. The hearings officer disagrees. The County stamp and explicit reference to #LE 4-80, the prior Lot of Exception decision, demonstrates that the County did review the partition plan and made a determination that the partition plan implemented the prior decision and that it was exempt from subdivision review. That express conclusion is a decision by the County, which was not appealed and is now final and not subject to collateral attack. The hearings officer is prohibited from considering the validity of that prior decision in this proceeding. Any procedural or substantive errors the County might have made in issuing that approval are not a basis to conclude that the unit of land is not a lawful lot or parcel. *Landwatch Lane Cnty. v. Lane Cnty.* (LUBA No. 2018-078).

b. The fact that the County did not adopt findings or provide notice of the Exempt Minor Partition is irrelevant. This was a minor administrative decision, similar to a building or other

² The hearings officer refers to the page numbers listed in Exhibit H.6. Because Exhibit H.6 is an excerpt of the 1979 Code, the first page of Exhibit H.6 is “p. 38”.

administrative permit approval, and was subject to appeal under the same procedures applicable to building and other administrative permits.

9. The site was created in 1981 through the recording of a new deed (Exhibit A.13) following the County's approval of an Exempt Minor Partition that implemented Land Use Case #LE 4-80 (Exhibit B.3). As stated above, Land Use Case #LE 4-80 approved the division of the site's parent parcel into a 34.194 acre parcel and a 2.002 +/- acre parcel. Through the approval of case #LE 4-80 and the 1981 Exempt Minor Partition, the County verified that the site was in full compliance with all zoning minimum lot size, dimensional standards, and access requirements at that time.

a. The 1981 partition complied with zoning, even though it was smaller than the 38-acre minimum lot size required by the zoning that applied to the property at that time. The partition merely implemented the prior County decision approving the creation of a Lot of Exception, #LE 4-80. Lots of Exception were permitted in the MUA-20 zoning regulations in effect when #LE 4-80 was approved. The 1981 partition implemented that prior approval.

1982 EXEMPT MINOR PARTITION

10. In 1982, the County approved a second Exempt Minor Partition to adjust the common property line between the site and the 2.002 +/- property created by the 1979 and 1981 decisions (Exhibit B.4). The 1982 "partition" created the site in its current configuration. The common property line adjusted in 1982 between the two parcels remains in the same location today as shown on the approved Exempt Minor Partition (Exhibit B.4). The 1982 Exempt Minor Partition also complied with zoning in effect at the time the "partition" was approved and recorded.

a. The 1982 "partition" was not a partition as defined by Section 11.45.010 of the Code in effect in 1982. 11.45.010(t) provided, in relevant part, "'Partition land' does 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 Ordinance No. 100." The "partition" did not create any new parcels or change the size of the parcels nor did it reduce the size of any parcel below the minimum lot size allowed in the then applicable EFU-38 zone. Both parcels were already below the 38-acre minimum lot size. The "partition" did not change the size of the existing parcels in any way. It was a common area exchange that relocated the boundaries of the parcels without changing their size. Therefore, the 1982 "partition" was a lot line adjustment that was exempt from the County land division ordinance pursuant to Section 11.45.110 of the Code in effect at that time. The County identified it as a Lot Line Adjustment in the stamp on the partition plan and deeds (Exhibit B.4). The 1982 "partition" was consistent with applicable zoning, because it did not create any new parcels or reduce alter the size of the existing parcels.

11. The 1981 and 1982 partitions were not subject to the one-year deadline set out in Section 1.381 of the Code in effect in 1981 and Section 11.45.420 in effect in 1982. Exempt Minor Partitions were exempt from all provisions of the County land division ordinance in effect at these times, including the one-year deadline for filing a final partition plan set out in Sections 1.381 and 11.45.420. The 1979 Lot of Exception decision did not include an expiration date. The 1981 and 1982 partition plans that implemented the 1979 Lot of Exception decision were recorded prior to January 1, 2003, the retroactive expiration date provided in current MCC 39.1190 Therefore, the partition plans implementing the 1979 Lot of Exception decision were timely and the 1979 Lot of Exception decision did not expire.

12. This case is distinguishable from the hearings officer's prior decision in T2-2019-11865 (Stevens). In that case the property owner did not seek or obtain County review and approval of the lot line adjustment. The property owner merely recorded new deeds without seeking or obtaining County review. Therefore, the doctrines of finality and collateral attack were inapplicable in that case. In this case, the applicant's predecessors in interest sought and received County review and approval of the partition. Those decisions are final. The applicant and other affected persons are entitled to rely on those decisions and they are not subject to collateral attack in this proceeding.

2008 CIRCUIT COURT JUDGEMENT

13. In 2008, as part of a quiet title action, a Circuit Court judgement clarified the western property line boundary between the former parent parcel (now the site) and the adjoining property to the west identified as 15610 NW Germantown Road, also known as tax lot 1N1W08C - 00500 ("TL 500") (Exhibit B.3). This clarification resulted in a corrected property size description of 33.737 +/- acres for the site. As part of its Findings of Fact and Conclusions of Law, the Court found that the relocation of the property line occurred sometime between 1936 and 1956 (Exhibit B.5).³

14. Based on the Court's decision, the west boundary of the site was relocated and the site was reduced in size by action of law prior to the effective date of restrictive zoning, which first came into effect after 1956. Therefore, the Court decision did not create or reconfigure the property in violation of any zoning or land division laws and does not impact this Lot of Record determination. The Court merely recognized a historic occurrence. Following the Court's clarification of the boundary of the site's parent parcel, the current configuration of the site continues to comply with the County's 1979-1982 approvals.

15. Based on the information discussed above, the hearings officer finds that the creation and reconfiguration of this parcel in 1979-1982 satisfied all applicable zoning minimum lot size, dimensional standards, and access requirements and land division laws at the time.

EFU LOT OF RECORD PROVISIONS

16. MCC 39.3070 provides, in relevant part:

Lot of Record – Exclusive Farm Use (EFU)

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

³ Incorrectly identified as Exhibit B.3 in the director's decision.

(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.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.
2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.
3. Three examples of how parcels and lots shall be aggregated are shown in Figure 1 below with the solid thick line outlining individual Lots of Record:
4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g., MUA-20, RR, RC, SRC, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exception to the standards of (A)(2) above:

- (a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(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 39.4260 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.**

17. The applicant provided a chain of title for the site and adjacent properties to demonstrate ownership on February 20, 1990 (Exhibit A.9, A.11, A.13, and A.15). Based on the provided chain of title, the owners of the site on February 20, 1990 (American Equities Inc.) did not own any contiguous parcel(s) or lot(s). Therefore, the site qualifies as a single, approximately 33.737 +/- acre, Lot of Record and the site complies with MCC 39.3070(A).

18. The EFU zone requires an 80 acre minimum lot size, a 50-foot front lot line, and road frontage (MCC 39.4245, 39.4260). The site has a front lot line in excess of 50 feet and is adjacent to NW Germantown Road, so it also meets the access requirement. The 33.737 +/- acre site is below the 80-acre EFU minimum lot size, but as allowed in (C) above it may be occupied by any allowed use, review use or condition use subject to other requirements.

19. The site was created and reconfigured through the approval of Lot of Exception case #LE 4-80 and two Exempt Minor Partitions in 1979-1982 (Exhibit B.2 – B.4). Therefore, the site is not an area of land created by the foreclosure of a security interest. The site is not an area of land described as a tax lot solely for assessment and taxation purposes nor is it a mortgage lot.

20. The site is not an area of land created by a court decree. As discussed above, the 2008 circuit court decision clarified the location of the westernmost side property line of the site's parent parcel, a parcel created prior to zoning regulations (Exhibit B.5). The Court's clarification did not create an area of land and it has no effect on the Lot of Exception and land division process used to create the site in 1979-1982. Therefore, the site complies with MCC 39.3070.D.

T2-2019-11865 (Stevens)

21. The appellant makes several arguments regarding the legality of the Stevens parcel at issue in T2-2019-11865. However, that property is not currently before the hearings officer. The County determined that the parcel at issue in that case was not a separate lot of record. That decision was not appealed and is now final. The hearings officer has no jurisdiction to reconsider that decision in this proceeding.

D. CONCLUSION

Based on the above findings the hearings officer concludes that the site qualifies as a Lot of Record.

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 T2-2019-12608.

DATED this 16th day of March 2020.



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
- 'D' Comments Received

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 T2-2019-12608 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	General Application Form	10.24.2019
A.2	2	Cover Page and Table of Contents	10.24.2019
A.3	2	Applicant Narrative	10.24.2019
A.4	2	Tax Maps for the subject property	10.24.2019
A.5	1	Tax Assessor Map for 1N 1W 8C	10.24.2019
A.6	7	General Judgment of Quiet Title and Money Award	10.24.2019
A.7	3	Release of Lien	10.24.2019
A.8	5	Property Detail Report for 15248 NW Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.9	75	Chain of Title for 15248 NW Germantown Rd.	10.24.2019

A.10	9	Property Detail Report for 15610 NW Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.11	30	Chain of Title for 15248 NW Germantown Rd.	10.24.2019
A.12	5	Property Detail Report for 15036 NW Old Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.13	14	Chain of Title for 15036 NW Old Germantown Rd.	10.24.2019
A.14	5	Property Detail Report for 14810 NW Old Germantown Rd. completed by WFG National Title Insurance Company	10.24.2019
A.15	5	Chain of Title for 14810 NW Old Germantown Rd.	10.24.2019
'B'	#	Staff Exhibits	Date
B.1	2	County Department of Assessment & Taxation Property Information	10.24.2019
B.2	36	Land Use Case #LE 4-80	10.24.2019
B.3	4	Exempt Minor Partition approved January 12, 1981 that implemented Land Use Case #LE 4-80	11.08.2019
B.4	3	Exempt Minor Partition approved October 5, 1982 (related to a Lot Line Adjustment)	11.08.2019
B.5	6	Findings of Fact and Conclusions of Law 10.2.08	11.08.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	11.15.2019
C.2	5	Opportunity to Comment & mailing list	12.30.2019
C.3	17	Administrative Decision & mailing list	1.16.2020
C.4	2	Notice of Appeal	1.30.2020
C.5	5	Notice of Hearing & mailing list	1.31.2020
'D'	#	Comments Received	Date
D.1	2	Comments from neighbor Steve Baker	1.12.2020
'H'	#	Hearing Exhibits	Date
H.1	2	Applicant's (Mr. Rayhawk) narrative	2.21.2020
H.2	1	Map of 2 acre partition 1979 submitted by applicant	2.21.2020
H.3	14	Copy of T2-2019-11865 Decision of Hearings Officer submitted by appellant's representative, Don Kienholz	2.21.2020
H.4	4	Copy of Mult. County Ordinance No. 174, eff. 10.19.78 submitted by Mr. Kienholz	2.21.2020

H.5	7	Copy of Exclusive Farm District (EFU-38) with handwritten date of 3-6-79 submitted by Mr. Kienholz	2.21.2020
H.6	6	Copy of Multiple Use Agriculture District (MUA-20) with handwritten date of 3-6-79 and stating "1979 zoning code" submitted by Mr. Kienholz	2.21.2020
H.7	3	Copy of staff exhibit B.4 with handwritten notes submitted by Mr. Kienholz	2.21.2020
H.8	2	Copy of HB 4014 submitted by Mr. Kienholz	2.21.2020
H.9	4	Mr. Kienholz's narrative	2.21.2020
H.10	3	Mr. Kienholz's notes on Appeal of T2-2019-12608	2.21.2020
H.11	1	Hearing sign-in sheet	2.21.2020
I	#	Post Hearing Exhibits	Date
I.1	2	Rayhawk email dated 2.24.20	2.24.2020
I.2	19	Kienholz & Stevens post hearing memo – hand delivered	2.28.2020
I.3	1	Email from Staff Attorney Katherine Thomas w/post-hearing submission	2.28.2020
I.4	7	Staff Post-hearing memo	2.28.2020
I.5	3	Staff Attachment 1 – Land Division Regs MCC Ch. 11.45 Jan 1981	2.28.2020
I.6	1	Email from Trisha Stevens w/post-hearing submission	2.28.2020
I.7	9	Kienholz & Stevens post-hearing memo	2.28.2020
I.8	2	Kienholz Attachment #1	2.28.2020
I.9	1	Kienholz Attachment #2	2.28.2020
I.10	2	Kienholz Attachment #3	2.28.2020
I.11	1	Kienholz Attachment #4	2.28.2020
I.12	1	Kienholz Attachment #5	2.28.2020
I.13	1	Kienholz Attachment #6	2.28.2020
I.14	2	Kienholz Attachment #7	2.28.2020
J	#	Applicant's Final Argument	Date
J.1	7	Rayhawk Final argument	3.06.2020