

## NOTICE OF DECISION

---

**Case File:** T2-2020-14105

**Permit:** Lot of Record Verification

**Applicants:** Elenita Ronquillo,  
Terraforma Foundation Systems

**Owners:** Norman Family Trust

**Location:** Address: 5410 NW Cornell Road, Portland  
Alternate Account #: R941310680

Map, Tax Lot: 1N1E31AC -00300  
Property ID #: R316638

**Base Zone:** Commercial Forest Use – 2 (CFU-2)

**Overlays:** Significant Environmental Concern for Wildlife Habitat (SEC-h)  
Significant Environmental Concern for Streams (SEC-s)

**Proposal Summary:** The applicant is requesting a Lot of Record Verification for the above property. A Lot of Record Verification determines that a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County's aggregation requirements. The applicant does not propose any development as part of this application; therefore, Significant Environmental Concern permits are not necessary at this time.

---

**Determination:** The subject property known as 1N31AC -00300 is comprised of two (2) units of land. The two units of land are aggregated together so that tax lot 1N1E31AC -00300 is one Lot of Record in its current configuration.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, June 7, 2021 at 4:00 pm.**

---

**Issued by:**

**By:** Rithy Khut, Planner

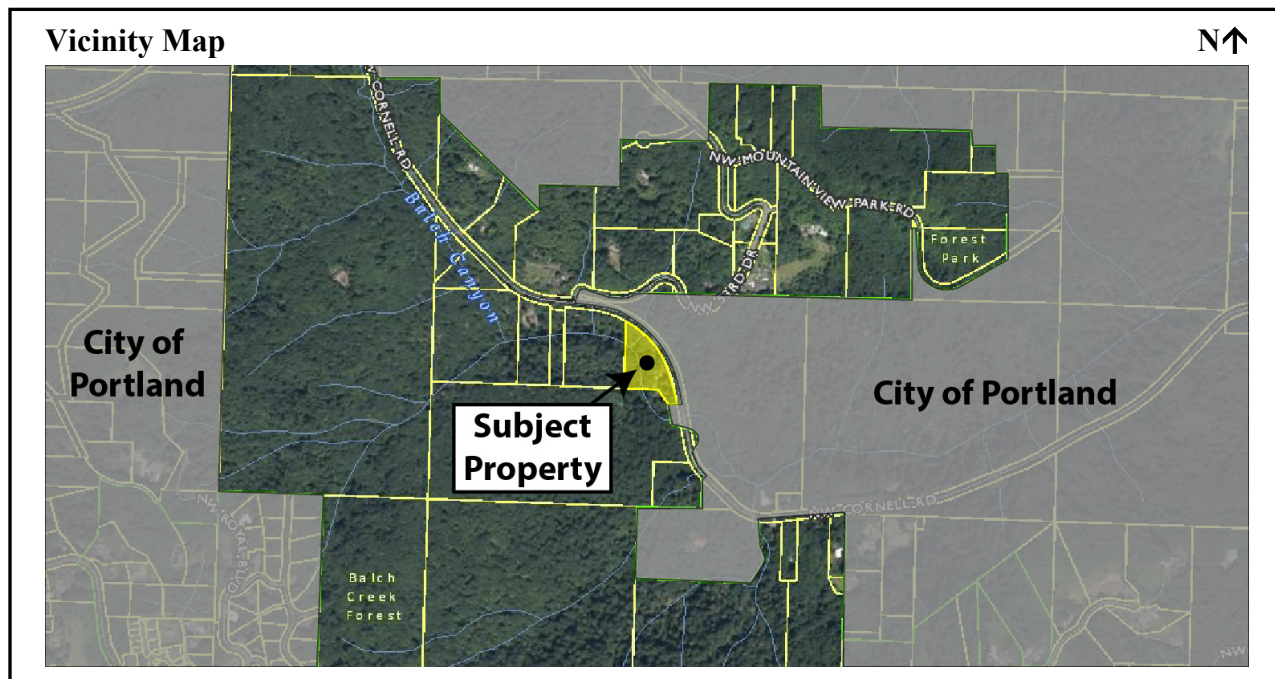
**For:** Carol Johnson, AICP  
Planning Director

**Date:** Monday, May 24, 2021

Instrument Number for Recording  
Purposes: #2018112517

**Opportunity to Review the Record:** For further information, the complete case file (the Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application) is available for review by contacting Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us. Copies of all documents are available at the rate of \$0.35/per page.

**Opportunity to Appeal:** An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.



**Applicable Approval Criteria:**

**For this application to be approved, the proposal will need to meet applicable approval criteria below:**

**Multnomah County Code (MCC):** General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – Commercial Forest Use-2 (CFU-2)

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

**Chapter 39 - Zoning Code**

**Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It

shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Record pages 1 through 3 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

**Note:** Once this decision is final, the applicant shall complete the following steps:

1. Read your land use decision and conditions of approval. Be ready to demonstrate compliance with the conditions.
2. Contact Rithy Khut, Planner, at 503-988-0176 or [rithy.khut@multco.us](mailto:rithy.khut@multco.us), **for an appointment** for review of the conditions of approval. Please ensure that any items above are ready for land use planning review.

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.0 Project Description:**

**Staff:** The applicant request a Lot of Record Verification for the property identified as 1N31AC -00300 (“subject property”). The application does not propose any new development at this time.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration.

### **2.0 Property Description & History:**

**Staff:** This application is for 1N31AC -00300, otherwise known as 5410 NW Cornell Road, Portland. The subject property is located on the southwest side of NW Cornell Road in unincorporated west Multnomah County in the area known as the West Hills Rural Area. The subject property is zoned Commercial Forest Use – 2 (CFU-2) and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is approximately 2.28 acres in size and is heavily forested with Balch Creek running through a portion of the subject property. There are two environmental overlays, Significant Environmental Concern for Wildlife Habitat (SEC-h) and Significant Environmental Concern for Streams (SEC-s) on the subject property.

The subject property is being assessed for a single-family dwelling with attached garage and a detached garage. The single-family dwelling was first assessed in 1944. Aerial photo review from 2020 confirms the presence two buildings, which the Division of Assessment, Recording and Taxation references (Exhibit B.3).

### **3.0 Public Comment:**

**Staff:** Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 as exhibited in Exhibit C.4. Staff did not receive any public comments during the 14-day comment period.

### **4.0 Code Compliance and Applications Criteria:**

#### **4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.**

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

As noted in Section 1.0 above, for purposes of the current application, this application is for a request for a Lot of Record verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. Therefore, this criterion is not applicable at this time. *This criterion is not applicable.*

## **5.0 Lot of Record Criteria:**

### **5.1 § 39.3005- 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.)**

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet (B) of this section and meet the Lot of Record standards set forth in the Commercial Forest Use – 2 (CFU-2) zoning district, which is discussed in Section 5.2. More specifically, section (B) above requires demonstration that the subject property: (a) satisfied all applicable zoning laws, and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the CFU-2 district establish additional requirements unique to the district, which are

evaluated in Section 5.2 of this decision. The findings below analyzes whether the Lot of Record provisions in section (B) have been met.

The applicant provided seven (7) deeds or contracts to support the Lot of Record request (Exhibit A.4 through Exhibit A.10). In the most recent deed, the subject property is referenced as “Parcel I” and “Parcel II” (Exhibit A.10). Parcel I and Parcel were created during two different time periods and are discussed separately.

Parcel I is approximately 6,534 square feet (0.15 acres), abuts NW Cornell Road (a public road), has an average lot width of 85 feet and average lot depth of 79.85 feet (Exhibit B.2). Planning staff located a deed recorded in Book 905, Page 491-492 on February 8, 1945 describing Parcel I, as an individual unit of land (Exhibit B.9). In 1945, the unincorporated portions of the County were not zoned. The first Interim Zoning Ordinance for Multnomah County was adopted on May 26, 1953. Parcel I met the County’s requirements at the time.

Parcel II is approximately 92,782.80 square feet (2.13 acres), also abuts NW Cornell Road (a public road), has an average lot width of 279.30 feet and average lot depth of 310.17 feet (Exhibit B.2). In the information provided by the applicant, a recorded Contract was provided. The Contract was recorded on November 24, 1969 and it contains a legal description matching the current configuration of the subject property (Exhibit A.6). The Contract was recorded in Book 708, Page 1031-1035 and describes both Parcel I and Parcel II in their current configuration. In 1969, Parcel I and Parcel II were both zoned R-10 (Single-Family Residential District) as shown in historical County zoning maps (Exhibit B.4 and B.5). The R-10 zone had a minimum lot size of 10,000 square feet, a minimum average lot width of 70 feet and a minimum average lot depth of 100 feet. The R-10 zone also required the lot to abut a public street or have such other access held suitable by the Planning Commission (Exhibit B.6). Based on the requirements of the R-10 zone, Parcel II met the zoning requirements of the district when created/reconfigured.

*The subject property, which is comprised of two (2) units of land, complied with all applicable zoning laws at the time of its creation or reconfiguration.*

In 1945, the County did not have land division regulations. In 1969, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1945 and 1969 deeds (Exhibit B.9 and Exhibit A.6), the applicable land division laws were satisfied.

*Based upon the above, the subject property, which is comprised of two (2) units of land satisfied all applicable zoning and land division laws when they were created in 1945 and 1969.*

**5.2 § 39.3030 LOT OF RECORD – COMMERCIAL FOREST USE-2 (CFU-2).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 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**

**Staff:** The assessor’s maps and deeds supplied by the applicant indicate that the tax lot is comprised of two (2) units of land. The two (2) units of land are contiguous and were under the same ownership on February 20, 1990. As such, the two (2) units of land are required to meet the requirements of MCC 39.3030(A)(2) below.

**(2) A group of contiguous parcels or lots:**

- (a) Which were held under the same ownership on February 20, 1990; and**
- (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 MCC 39.3070 Figure 1 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, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or**

**Staff:** Tax lot 1N1E31AC -00300 (subject property) consists of Parcel I and Parcel II. Parcel I is approximately 6,534 square feet (0.15 acres). Parcel II is approximately 92,782.80 square feet (2.13 acres). The deeds supplied by the applicant and the Title Plant Records Report (Exhibit A.2) indicate that Parcel I and Parcel II were under the same ownership on February 20, 1990.

In comparing ownership data from the surrounding tax lots using taxation data from Multnomah County Division of Assessment, Recording, and Taxation (DART), no additional properties were in the same ownership on February 20, 1990 with the subject property. The table below shows the ownership of each of the surrounding properties before and after February 20, 1990.

<b>Alternative Account #</b>	<b>State ID#</b>	<b>Pre-1990 Tax Roll Property Owner</b>	<b>Post-1990 Tax Roll Property Owner</b>
R41310680	1N1E31AC -00300	Norman, Brent W & Susan J	Norman, Brent W & Susan J
<b>Adjacent Property to the Subject Properties</b>			
R941310020	1N1E31BD -00100	Audubon Society of Portland	Audubon Society of Portland
R941310040	1N1E31BD -00500	Oregon Parks Foundation	Oregon Parks Foundation
R941310170	1N1E31AC -00100	Audubon Society of Portland	Audubon Society of Portland



As indicated by the Title Plant Records Report (Exhibit A.2) and DART records (Exhibit B.1), the subject property, 1N1E31AC -00300 was owned by Brent and Susan Norman on February 20, 1990.

As part of the second requirement under MCC 39.3030(A)(2), if the continuous parcels or lots were under the same ownership on February 20, 1990 and were less than 19 acres, they would be required to be aggregated to comply with the minimum lot size of 19 acres. Based on deeds provided by the applicant, Parcel I and Parcel II are both under 19 acres in size. In total, the two parcels are 2.28 acres, which is smaller than 19 acres. Therefore, together, the two units of land (Parcel I and Parcel II) shall be aggregated into one Lot of Record.

*The subject property was found to be two (2) separate units of land. They shall be aggregated in order to comply with the minimum lot size of 19 acres. Together, the two (2) units of land known as "Parcel I" and "Parcel II" are one Lot of Record.*

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

**Staff:** The two (2) units of land were not created by partition or subdivision plat after February 20, 1990; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(4) Exceptions to the standards of (A)(2) above:**

**(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.**

**(b) 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.**

**Staff:** Parcel I does not contain a lawfully established habitable dwelling. Parcel II is developed with a lawfully established habitable dwelling; therefore, this criterion is not applicable. Additionally, the subject property was not created through a Lot of Exception application. Therefore, these criteria do not apply. *These criteria are not applicable.*

**(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;**
- (7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);**

**(8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;**

**Staff:** The code section above does not affect the determination of this case as the significant dates and ordinances are for informational purposes. *This criterion is not applicable.*

**(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 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** The Lot of Record is approximately 2.28 acres. The minimum lot size to create a new parcel in the CFU-2 zone is 80 acres. Therefore, the Lot of Record is subject to subsection (C) above. As such, it may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided that it remains a Lot of Record. *This criterion is met.*

**(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.**

**Staff:** As discussed above, 1N1E31AC -00300 is described as two unit of lands. Together, the two units of land are considered one Lot of Record. Although the subject property is an area of land described as a tax lot, it contains the entirety of the two units of land and is not an area of land described as a tax lot solely for assessment and taxation purposes.

Further, the subject property are not an area of land created by foreclosure of a security interest, a Mortgage Lot, or an area of land created by court decree. *These criteria are met.*

## **6.0 Conclusion**

Based on the findings and other information provided above, the tax lot 1N1E31AC -00300 is comprised of two (2) units of land. The two units of land are aggregated together so that tax lot 1N1E31AC -00300 is one Lot of Record in the Commercial Forest Use – 2 (CFU-2) zone.

## **7.0 Exhibits**

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2020-14105 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form, E-mail, and Receipt	12/10/2020
A.2	6	Fidelity National Title - Title Plant Records Report	12/10/2020
A.3	1	Fidelity National Title Map	12/10/2020
A.4	3	Statutory Bargain and Sale Deed recorded as Instrument #2018-112517 on October 30,2018	12/10/2020
A.5	1	Deed recorded in Book 554 Page 462-463 on June 20, 1940	01/07/2021
A.6	5	Contract recorded in Book 708, Page 1031-1035 on November 24, 1969	01/07/2021
A.7	1	Warranty Deed recorded in Book 796, Page 28-29 on November 23, 1943	01/07/2021
A.8	2	Bargain and Sale Deed recorded in Book 1180, Page 403-404 on May 20, 1977	01/07/2021
A.9	3	Warranty Deed recorded in Book 1238, Page 1478-1480 on February 1, 1978	01/07/2021
A.10	9	Warranty Deed recorded in Book 481, Page 552-560 on January 31, 1938	01/07/2021
'B'	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1E31AC -00300 (Alt Acct # R941310680)	12/10/2020
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1N1E31AC -00300 (Alt Acct # R941310680) highlighted	12/10/2020
B.3	1	Aerial Photo from Summer 2020	04/23/2021
B.4	1	Historical Zoning Map of 1N1E31A depicting zoning prior to October 5, 1977	04/23/2021
B.5	1	Historical Zoning Map of 1N1E31B depicting zoning prior to October 5, 1977	04/23/2021
B.6	4	Historical Zoning Code describing Single Family Residential District R-10 on May 21, 1968	04/28/2021
B.7	1	Ownership comparison between Pre-1990 and Post-1990	04/28/2021
B.8	5	Parcel Record – Cartographic Unit Card for 1N1E31AC - 00100	04/28/2021

B.9	2	Warranty Deed recorded in Book 905, Page 491-492 on February 8, 1945	04/28/2021
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	4	Incomplete letter and applicant response	01/06/2021
C.2	1	Applicant's acceptance of 180 day clock	01/07/2021
C.3	1	Complete letter (day 1)	01/25/2021
C.4	4	Opportunity to Comment and mailing list	04/22/2021
C.5	4	Administrative "Short" Decision and mailing list	05/24/2021
C.5	13	Administrative Decision and mailing list	05/24/2021