

NOTICE OF DECISION

Case File: T2-2021-14746
Permit: Lot of Record Verification
Applicants: Duane & Roberta Ogle **Owners:** Duane & Roberta Ogle
Location: 18050 Se Richey Rd. Gresham **Map, Tax Lot:** 1S3E19DD-00100
Tax Account #R993191460 **Property ID #**R340696
Base Zone: Rural Residential (RR)
Overlays: Significant Environmental Concern - Water Resources (SEC-wr) and Flood Hazard (FH)
Proposal Summary: The applicant is requesting a Lot of Record Verification for the above property known as 1S3E19DD-00100. 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.

Determination: The subject property known as 1S3E19DD-00100 is a 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 Wednesday, December 8, 2021 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available by contacting the case planner. Copies of all documents are available at the rate of \$0.40/per page. For further information, contact Marisol Cervantes, Staff Planner at 503-988.9452 or at Marisol.Cervantes@multco.us

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.

Issued by: Marisol Cervantes Digitally signed by
Marisol Cervantes
By: Marisol Cervantes, Planner
For: Carol Johnson, AICP
Planning Director
Date: Wednesday, November 24, 2021



Applicable Approval Criteria:

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

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

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential

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

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 requests a Lot of Record Verification for the property identified as 18050 SE Richey Rd. Gresham (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: The subject property is located in unincorporated east Multnomah County in the area known as Gresham. The property is zoned Rural Residential (RR) and is located within of Metro’s Urban Growth Boundary (UGB). The subject property is occupied by a Single Family Dwelling built in 2016, a small shed and two large agricultural buildings.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in 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, this application is 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 standard is not applicable.*

5.0 Lot of Record Criteria:

5.1 MCC 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 MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the Rural Residential zoning district. 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 findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided a recorded Sales Contract and a recorded deed (Exhibit A.2 & Exhibit A.3) to support the Lot of Record request. Exhibit A.2 describes the current property configuration just excluding the easement. Exhibit A.3 describes the current configuration of the subject property and is the most current deed. The recording of the Sales Contract occurred in January 1967 and contains a legal description matching the current configuration of the subject property (Exhibit A.2). In 1967, the subject property was zoned Suburban Residential per historical County zoning maps (Exhibit B.3).

The SR zone had a minimum lot size requirement ranging from 10,000 to 40,000 square feet depending on the services in the area. It also required a minimum average lot width of 70 feet, a minimum average lot depth of 100 feet, and a requirement of public road frontage or other

access deemed safe and convenient (Exhibit B.4 & B.5). To establish a lot that is (a) 40,000 sq. ft. or more, (b) between 40,000 to 20,000 sq. ft., or (c) between 20,000 sq. ft. to 10,000 sq. ft., the property would need to have the following characteristics:

Lot Area	Minimum Standards
40,000 sq. ft.	<ul style="list-style-type: none"> • Approved public or private water supply • Approved individual sewage disposal system • Approved public access
20,000 sq. ft.	<ul style="list-style-type: none"> • Approved public water supply • Approved individual sewage disposal system • Approved public access
10,000 sq. ft.	<ul style="list-style-type: none"> • Approved public water supply • Approved public sewer or State approved cesspool • Approved public access

The subject property is 4.12 acres, has access via an easement from SE Richey Rd., has a front lot line length of 329.75 feet and average lot depth of 300 +/- feet (Exhibit B.5). Assessment and Taxation maps (B.6 & B.7) shows a road right-of-way along the western property line. This right-of-way converted to easement access by 1972, but when the property was created in 1967, it did have road frontage. The applicant provided a current deed for the subject property (Exhibit A.3). The property owners purchased the property in 1972 (Exhibit A.3) and have not recorded a new deed since. The 1972 deed contains a legal description that matches the recorded 1967 legal description (Exhibit A.3) and contains a written easement.

The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.

In 1972, the process to divide a parcel 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 1967 deed (Exhibit A.2), the applicable land division laws were satisfied.

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1972.

5.2 MCC 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

(A) In addition to the standards in MCC 39.3005, for the purposes of the RR 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, RR zone applied, Ord. 148 & 149;**

- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;
- (7) 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 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Section (A) is for information purposes. The subject property has less than the minimum lot size for new parcels in this zone and is subject to (B) above. It may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. *Criteria met*

(C) Except as otherwise provided by MCC 39.4380, 39.4385, 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.

Staff: Subsection (C) is for informational purposes. The property owner is not proposing to convey any portion of the lot at this time. *Criterion met*

(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.

Staff: As discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is a legally described parcel created by the recording of a sales contract in 1967 and is not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

Based on the findings in 5.1 & 5.2, the subject property is a single Lot of Record.

6.0 Exhibits

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

All Exhibits are available for review in Case File T2-2021-14746 by contacting the case planner via email at marisol.cervantes@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	06.10.2021

A.2	3	Sales Contract recorded on January 20, 1967 in Book 544, Pages 398 - 400	07.22.2021
A.3	2	Warranty Deed recorded on June 16, 1972 in Book 863, Pages 498 - 499	07.22.2021
'B'	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1S3E19DD-00100 (Alt Acct #R993191460)	06.10.2021
B.2	5	Parcel Record Card for 1S3E19DD-00100	08.05.2021
B.3	1	1962 Zoning Map for 1S3E19DD-00100	11.17.2021
B.4	6	1968 Zoning Ordinance 100 amended SR zoning	11.17.2021
B.5	6	1964 SR Zone	11.18.2021
B.6	1	Tax Map 1S3E19DD	11.18.2021
B.7	1	1966 Tax Map and 10.5.1977 Zoning	11.18.2021
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete letter	07.09.2021
C.2	1	Applicant's acceptance of 180 day clock	07.19.2021
C.3	1	Complete letter (day 1)	08.20.2021
C.4	3	Opportunity to Comment and mailing list	08.31.2021
C.5	8	Administrative Decision and mailing list	11.24.2021