

NOTICE OF DECISION

Case File: T2-2022-15447
Permit: Lot of Record Verification
Applicants: Patrick Maher **Owner:** Michael Robideau
Location: **Address:** 16900 NW Sauvie Island Rd, Portland **Map, Tax Lot:** 2N1W21-01100
Tax Account #R971210140 **Property ID #**R325150
Base Zone: Exclusive Farm Use (EFU) **Overlays:** Flood Hazard
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.

Determination: The subject property known as 2N1W21-01100 is NOT 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 Monday, September 12, 2022 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 case planner Lisa Estrin at 503-988-0167 or via email at lisa.m.estrin@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: _____

By: Lisa Estrin, Senior Planner

For: Carol Johnson, AICP
Planning Director

Date: Monday, August 29, 2022

Vicinity Map



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, MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – EFU

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 2N1W21-01100 (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. In the EFU zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as Sauvie Island. The property is zoned Exclusive Farm Use and is located outside of Metro’s Urban Growth Boundary (UGB). Assessment & Taxation records indicate that the subject property is occupied by single-family dwelling and a farm building.

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.2. Staff received one public comments during the 14-day comment period.

3.1 Metro Comment: Metro is the property owner at 13901 NW Howell Park Rd, Portland. They provided a letter on May 31, 2022 regarding the application. They indicate that it is hard to comment on this application without having historical county records to review. They also indicate that the subject property has undergone significant changes which include change of use, erection of three buildings, and a possible encroachment of one of the buildings within the southern side yard (Exhibit D.1).

Staff: The Lot of Record Verification does not review the physical improvements on the subject property. The records relied on to make this decision are available by contacting the case planner.

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.

Staff: 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 EFU 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 Lot of Record standards set forth in the EFU district establish additional requirements unique to the district, which are evaluated in Sections 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided five deeds and a Title Plant Records Report (Exhibit A.2 through A.6 and A.10) to support the Lot of Record request. The earliest deed provided describing the subject property was recorded in March, 1968 and contains a legal description matching the current configuration of the subject property (Exhibit A.6). From 1962 through December 8, 1975, the subject property was zoned F-2 per historical County zoning maps (Exhibit B.10 & B.11).

From 1962 to December 8, 1975, the F-2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width (Exhibit B.16 & B.18).

The subject property is 20.05 acres, abuts NW Sauvie Island Rd (a public road), has a front lot line length of 1,071.29 feet (Exhibit B.6). The applicant provided a current deed for the subject property (Exhibit A.6) that contains a legal description that matches the recorded 1968 legal description (Exhibit A.2 & A.3).

The subject property and the surrounding area are zoned Exclusive Farm Use as shown in Exhibit B.15. The subject property is not split zoned and hence cannot be divided pursuant to MCC 39.3005(B)(c).

The subject property complied with general Lot of Record requirements at the time of its creation or reconfiguration.

In 1968, the process to create or 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 1968 deeds (Exhibit A.2 & A.3), the applicable land division laws were satisfied.

Based upon the above, the subject property satisfied general Lot of Record requirements and land division laws when it was created or reconfigured in 1968.

5.2 MCC 39.3070 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

(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

Staff: The subject property, 2N1W21-01100, is not a Lot of Record in its current configuration because it has not been consolidated with 2N1W21-01200 as required by the Hearings Officer in T2-2021-14361 (Exhibit B.2) and as affirmed by the Land Use Board of Appeals (LUBA) (Exhibit B.3).

Criteria not met.

(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.

Staff: The subject property was created in 1968 (Exhibit A.3 & A.4). Staff has found no Lot of Exception or Conditional Use permit that authorized its creation. The subject property must meet either (A)(1) or (A)(2) above.

(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, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

(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.

Staff: Section (B) is for information purposes. The subject property has less than the minimum lot size for new parcels or lots in the EFU zone and would be subject to (C) above if it was a Lot of Record. *If or when the subject property becomes a Lot of Record it will be subject to (C).*

(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 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 tracts are 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 5.2, the subject property is not currently a Lot of Record.

6.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits
- ‘D’ Comments Received

All other exhibits are available for review in Case File T2-2022-15447 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	3/16/22

A.2	2	Deed recorded April 12, 1962 in Book 2111, Page 178	4/29/22
A.3	2	Deed recorded March 12, 1968 in Book 608, Page 1086	4/29/22
A.4	2	Bargain & Sale Deed recorded April 1, 1968 in Book 611, Page 1616	4/29/22
A.5	2	Bargain & Sale Deed recorded on April 24, 1985 in Book 1818, Page 2267	4/29/22
A.6	2	Transfer on Death Deed recorded on December 10, 2018 in Book 2018-126304	4/29/22
A.7	2	Resubmittal Email from Tom C. Holmes at Dunn Carey	4/29/22
A.8	2	Letter from Ty Wyman, Dunn Carney regarding T2-2022-15447 regarding the requested information in the Incomplete Letter.	4/29/22
A.9	1	Tom Holmes Email adding Title Plant Report to Record	5/11/22
A.10	5	Ticor Title's Title Plant Records Report dated August 13, 2021	5/11/22
'B'	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 2N1W21-01100 (Alt Acct#R971210140 / R325150)	3/16/22
B.2	15	T2-2021-14361 Hearings Officer Decision regarding Maher Lot of Record	5/11/22
B.3	10	Patrick Maher vs Multnomah County LUBA Decision	5/11/22
B.4	2	A&T Property Information for R971210150 (2N1W21-01200)	5/11/22
B.5	1	Death Certificate for Mabel Dudley dated October 8, 2019	8/20/22
B.6	1	Current Tax Map 2N1W21	8/20/22
B.7	2	Parcel Record Card for tax lot 2N1W21-01200	8/20/22
B.8	26	1955 Subdivision Regulations	8/20/22
B.9	5	Probate Dept Order of Distribution dated September 14, 1967	8/20/22
B.10	1	1962 Zoning Map for 2N1W21	8/20/22
B.11	1	December 9, 1975 Zoning Map for 2N1W21b	8/20/22
B.12	1	October 5, 1977 Zoning Map for 2N1W21b	8/20/22
B.13	1	October 6, 1977 Zoning Map for 2N1W21b	8/20/22
B.14	1	1999 zoning Map for 2N1W21	8/20/22
B.15	1	Current Zoning for Subject Property and Adjacent tax lots	8/20/22

B.16	2	1964 Zoning District Lot Sizes	8/20/22
B.17	1	1964 F-2 Zoning Regulations	8/20/22
B.18	2	1974 Zoning District Lot Sizes	8/20/22
B.19	1	1974 F-2 Zoning Regulations	8/20/22
B.20	7	1975 Zoning Ord Changes	8/20/22
B.21	7	1977 EFU Regulations	8/20/22
B.22	1	February 20, 1990 Property Ownership	8/20/22
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete letter dated April 13, 2022	4/13/2022
C.2	1	Complete letter (day 1 – May 11, 2022) dated May 12, 2022	5/12/2022
C.3	3	Opportunity to Comment	5/18/2022
C.4	9	Administrative Decision	8/29/2022
C.5	2	Mailing Lists	8/26/2022
C.6	10	Various Documentation Emails	8/22/2022
'D'	#	Comments	Date
D.1	1	Metro Letter dated May 31, 2022	5/31/2022