



July 28, 2010

Marina Yudin
12153 SE Oatfield Rd
Milwaukie, OR 97222

Subject: Director's Determination of Legal Lot status for 12153 SE Oatfield Rd
(File # DD-10-03)

Dear Ms. Yudin:

On July 6, 2010, you submitted a request for a Director's Determination of the legal lot history and status of the property at 12153 SE Oatfield Rd. Specifically, you asked whether the two historical lots that appear to comprise the property can be recognized as legal lots of record that could be re-established as independent, buildable lots.

Lot History

The subject property is referenced on the Clackamas County Tax Assessor's maps as Tax Lot 300 in Township 1 South, Range 1 East, Section 36 CD (1S1E36CD00300). According to the records you provided, the property achieved its current configuration through the following process:

1. The property is located on the southern part of Lot E in Cogswells First Addition to the Town of Milwaukie, platted in 1905 – see Figure 1.
2. In 1942, the larger, northern portion of what is now Tax Lot 300 was created by deed (Book 294, Page 750) – see Figure 2. It was carved out of part of Lot E from the Cogswells subdivision by Richard and Evelyn Secanti and transferred to Henry and Carrie Booth.
3. In 1943, a similarly sized lot was established adjacent to Deed 294-750, created by deed (Book 303, Page 271) – see Figure 3. It was composed of the remaining southern portion of Lot E and the northern portion of Lot F from the Cogswells subdivision. The new property was transferred from Earl and Kathleen Jones to L.V. and Grace Clark.

Figure 1 – Portion of Cogswells subdivision (1905)

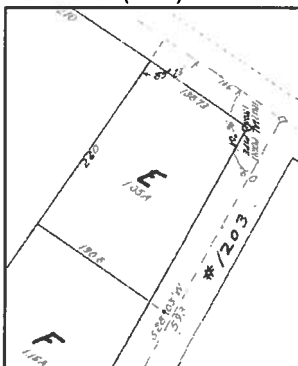


Figure 2 – Deed lot 294-750 (1942)

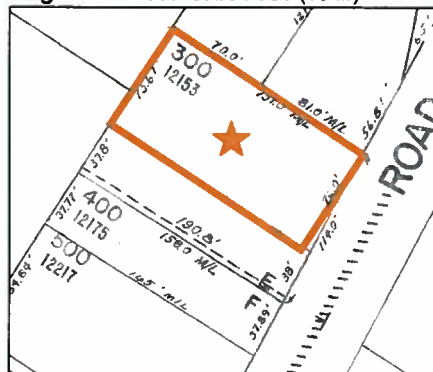
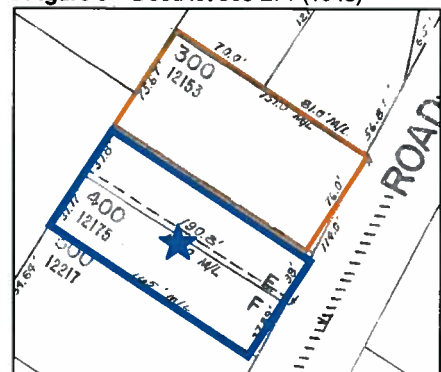


Figure 3 – Deed lot 303-271 (1943)



4. In 1945, two more deeds effectively split Deed lot 303-271. With one deed, the southerly half of Deed lot 303-271 was established (Book 345, Page 264) – see Figure 4. The legal description in this deed remains essentially the same as the current legal description for Tax Lot 400. This property was transferred from L.V. and Grace Clark to Ila Mann.

With a second deed, the northerly half of Deed lot 303-271 was established by L.V. and Grace Clark and transferred to Henry and Carrie Booth (Book 350, Page 568) – see Figure 5.

5. In 1951, Deed lots 294-750 and 350-568 were effectively combined in another deed transaction that described the perimeter of what is now Tax Lot 300 (Book 445, Page 265) – see Figure 6. The properties were transferred from Henry and Carrie Booth to Vernal and Helen Shoemaker. The legal description in this deed remains the same as the current description for Tax Lot 300.

Figure 4 – Deed lot 345-264 (1945)

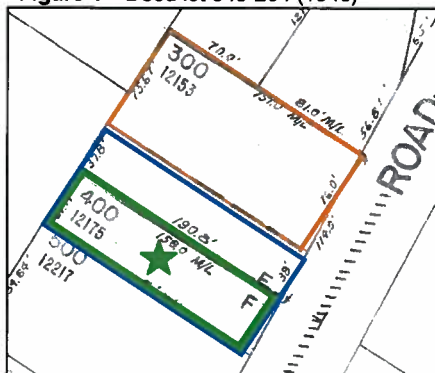


Figure 5 – Deed lot 350-568 (1945)

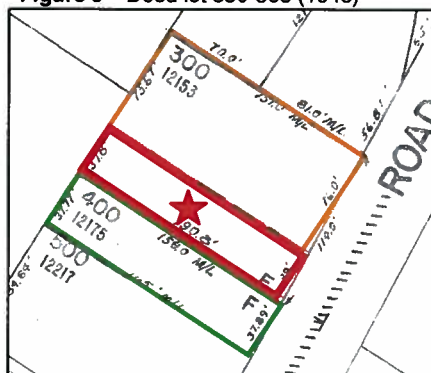
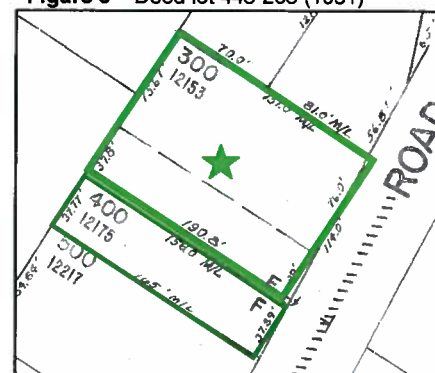


Figure 6 – Deed lot 445-265 (1951)



Relevant Code Standards

To the best of our knowledge, the subject property was located within the city limits when the City's first zoning code was adopted in 1946, so it has been within the City's jurisdiction and subject to all applicable rules for a long time. However, the City's Subdivision Ordinance, which governs the creation of lots, was not established until 1967. Before that time, there were a number of ways that new lots could be legally created, including by subdivision plat and by deed. The various deed lots noted above were all created prior to 1967, so there is no question about the legality of those actions.

According to the lot history described above, as of 1945 there were three legal lots of record in place on what is now Tax Lots 300 and 400. With the adoption of the City's zoning code in 1946, the two smaller lots (Deed lots 345-264 and 350-568) became nonconforming with regard to the minimum dimensions required to allow new residential construction (50 feet by 100 feet) because they are both only approximately 38 feet wide. However, their nonconforming status would not have precluded new construction on either lot. (Information from the Clackamas County Assessor's office indicates that the existing house on Deed lot 294-750 was built in 1941.)

Milwaukie Municipal Code (MMC) Title 17 Land Division Ordinance establishes standards for creating new units of land as well as for adjusting property boundaries. MMC 17.08 provides definitions for "lot" (unit of land created by subdivision) and "parcel" (unit of land created by partition), but since all of the properties in question were created

by deed, they are considered "tracts" by the code (units of land other than lots or parcels). The definition for "unit of land" (a legally created lot, parcel, or other unit of real property legally created by metes and bounds description or other legal means that is recorded on the County land records) serves as an umbrella category under which lots, parcels, and tracts are covered.

The key question in making this determination appears to be whether the act of creating Deed lot 445-265 in 1951 effectively consolidated Deed lots 294-750 and 350-568 and erased or over-wrote the distinct lots that were created by deed in 1942 and 1945, respectively. Using the definition of "unit of land," we can conclude that Deed lots 294-750 and 350-568 were both "units of land" that existed prior to 1951. And we can also conclude that the creation of Deed lot 445-265 established yet another "unit of land" that was recorded by the County. But MMC Title 17 does not provide any additional guidance on this issue.

To answer the key question in this case, it is useful to examine a key subsection in Chapter 92 of the Oregon Revised Statutes (ORS), which deals with subdivisions and partitions. In particular, ORS 92.017 addresses the conditions under which a legally created lot or parcel remains a discrete lot or parcel:

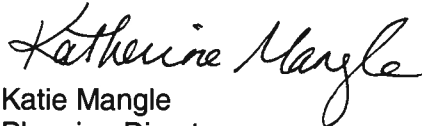
"A lot or parcel legally created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law."

Given that Deed lots 294-750 and 350-568 were legally created, and given that the creation of Deed lot 445-265 combined and did not further divide either previously established tract, it seems appropriate to conclude that both Deed lot 294-750 and Deed lot 350-568 can be re-established as separate tracts. Both tracts meet the minimum 3000-square-foot lot area required by MMC 19.401.1 to be considered "buildable" but remain subject to all other standards of the underlying R-5 zone (MMC 19.303).

Conclusion

This letter shall serve as documentation of my determination that your property does indeed consist of two legal lots of record that can be re-established as separate buildable lots. Please be aware that before receiving permits for new construction on either lot, you will have to demonstrate that no structures encroach across the shared property line, as required by MMC 19.402.1.A. If you have any questions about this determination, please contact **Brett Kelder**, Associate Planner, at **(503) 786-7657**.

Sincerely,



Katie Mangle
Planning Director

Copy: Land Use File (DD-10-03)
Address File for 12153 SE Oatfield Rd
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist