



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

NOTICE OF DECISION LEGAL LOT DETERMINATION

RECEIVED
OREGON DEPT. OF TRANSPORTATION
REGION 1 OFFICE
2009 AUG 20 AM 11:12

DATE: August 14, 2009

STAFF: Scott Whyte AICP, Senior Planner *SW*

APPLICATION: **LLD2009-0002 (14250 SW Allen Blvd - Lot Determination)**

LOCATION: Washington County Tax Assessors Map No. 1S1-21BB,
Tax Lots 16500 and 16600

ZONING: Community Service (CS)

NAC: Highland

REQUEST: The applicant requests Legal Lot Determination for the Tax Lots identified above, addressed at 14250 SW Allen Blvd.

PROPERTY OWNERS/
APPLICANT: STATE OF OREGON, DEPT. OF TRANSPORTATION
REGION 1 – RIGHT OF WAY
123 FLANDERS, PORTLAND, OR 97209-4012
ATTN: TAMARA PATRICK

AUTHORIZATION: Ordinance 2050, The Development Code

APPROVAL CRITERIA: Development Code, Section 40.45.15.1.C

DECISION: The Director has given **APPROVAL** of **LLD2009-0002 (14250 SW Allen Blvd – Legal Lot Determination)**, subject to the condition identified at the end of this notice. A copy of the application is on file at City Hall.

APPLICATION PROCESSING

Written notice of the decision for Type 1 applications shall be mailed to the applicant. The decision will be final, unless appealed as provided in Section 50.60 within twelve (12) calendar days after the date of the notice or may be modified pursuant to Section 50.95. An appeal of this approval must be filed no later than **4:30p.m., Wednesday, August 26, 2009**. An appeal of this application shall contain at least the following information:

- A. The case file number designated by the City,
- B. The name and signature of the applicant as appellant.
- C. Specification of evidence or written testimony provided with the application to which the decision under appeal is contrary.
- D. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to prove the error.
- E. The appeal fee, as established by resolution of the City Council. \$250.00

Failure to comply with the requirements of Sections 50.60.1 and 50.60.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.

Request for an appeal should be addressed to: Beaverton Planning Commission, c/o Director, City of Beaverton, PO Box 4755, Beaverton, OR 97076-4755.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at City Hall in the Development Services Division, 4755 SW Griffith Drive, 2nd Floor. Please call the Development Services Counter for additional information, 503-526-2420

If an applicant does not intend to appeal the decision, the applicant may complete a form stating such intention. Upon submittal of said form to the City, the decision shall be final and no further appeal period shall be necessary.

120 Day Requirement:

In accordance with State statute, all land use applications must have a final decision within 120 days from the date the application was made complete. Completeness of the application was perfected on August 4, 2009. Therefore, the City must take final action on the application on or before December 2, 2009.

For additional information regarding this request, please contact Scott Whyte, Senior Planner in the Development Services Division at 503-526-2652.

LEGAL LOT DETERMINATION
APPROVAL CRITERIA

Section 40.47.15.1.C. of the Development Code provides approval criteria for evaluating and rendering a decision on all Legal Lot Determination applications. These approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Legal Lot Determination.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The unit of land conforms to the lot area and dimensional standards of Chapter 20 (Land Use); except where a unit of land was created by sale prior to January 1, 2007 and was not lawfully established, the Director may deem the unit of land a Legal Lot upon finding:
 - a. The unit of land could have complied with the applicable approval criteria for creation of a lawful parcel or lot in effect when the unit of land was sold; or
 - b. The City, or County prior to annexation, approved a permit as defined in ORS 215.405 or 227.402 for the construction or placement of a dwelling or other structure on the unit of land after the sale, and such dwelling has all of the features listed in ORS 215.755(1)(a)-(e).
4. The application contains all applicable submittal materials as specified in Section 50.25.1 of the Development Code.
5. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

LEGAL LOT DETERMINATION
FACTS & FINDINGS

The applicant requests Legal Lot Determination (LLD) on the area described herein as Tax Lots 16500 & 16600 of Washington County Tax Assessor's Map 1S1-21BB (referred to herein as Tax Lots 16500 & 16600). The applicant's written response to LLD approval criteria is incorporated hereto by reference (a one page document prepared by the applicant, ODOT, stamp-dated Received by the City on July 6, 2009). Excepted where specifically noted herein, staff concurs with the response prepared by ODOT as findings in support of the LLD proposal. The applicant's statement in response to Criterions 2 (fees submitted) and 4 (materials submitted) are adequate and shall be incorporated hereto as findings in support for the LLD. In response Criterions 1, 3 and 5, staff has reviewed the proposal and finds as follows:

In response to Criterion No. 1 of LLD approval (*the proposal satisfies the threshold requirements for a Legal Lot Determination application*) the applicant's narrative responds only to Threshold No. 1 which states *an owner of a lot or parcel has requested the LLD for one or more contiguous lots or parcels under the same ownership*. While staff concurs with the applicant's statement for satisfying the Criterion, staff also finds that the applicant's proposal has qualified for consideration under Threshold No. 2 of LLD, where *the owner or contract purchaser of a lot or parcel requests a Legal Lot Determination to validate a unit of land alleged to be improperly created by sale. ...* In this case, the City hereby alleges the combined parcel area (Tax Lots 16500 & 16600) to have been improperly created by sale. Facts to support this include:

1. No apparent record of past partition or subdivision approval through Washington County, where the unit of land (combined area of Tax Lots 16500 & 16600 to the same or similar configuration that exist today) is recognized as a Lot or Parcel contained within a recorded partition or subdivision, and
2. Consistent reference to "*a portion of Lots 28 (and 29), of Spencer Homestead...*" as found in past warranty deeds when the subject property has transferred ownership (mostly for purpose of sale) between the period of January 1966 and December 1982.

Summary Finding for Criterion No. 1: For the reasons explained above, staff finds the applicant to have satisfied Thresholds 1 and 2 of LLD, in response to Criterion No. 1

To Criterion No. 3 of LLD approval, the applicant's narrative responds only to the first part that requires conformance to applicable lot area and dimensional standards of Chapter 20. In this case, the subject property is located within the Community Service (CS) zone identified in Section 20.10.50 of the Development Code. Herein, staff concurs with the applicant's statement that both tax lot exceed the minimum width and depth standards (70-feet and 100-feet, respectively). Staff also finds the existing building on-site (most recently occupied by the Dept. of Motor Vehicles) to comply with the minimum front, rear and side yards of the CS zone – provided that both tax lots are combined to form one lot (as explained herein).

Herein staff has determined the proposal to satisfy Threshold No. 2 of LLD approval where the City alleges the unit of land (Tax Lots 16500 and 16600) to be improperly created by sale. Of key consideration is the reference provided to "Lots" and/or "Parcels" as defined under State law. The City operates within the State framework of laws governing the division of land and creation of lots as described under Oregon Revised Statutes (ORS). Pursuant to ORS 92.010(4), a "Lot" *means a single unit of land that is created by a subdivision of land*. The same definition is applied to "Parcel" found under ORS 92.010(6).

In review of the materials provided by the applicant, including but not limited to a deed history beginning from the date of March 1962 and ending on December 1982, there is no evidence to support the area and configuration of Tax Lots 16500 and 16600 combined, to

have been legally created through a Subdivision or Partition application. Furthermore, in review of City annexation and land use records, it is apparent to staff that the subject area was within the City at the time when the City approved an application for office expansion on said area in April of 1979 (via City Case File No. BSDR 26-74). At approximately the same period, transfer of deed title occurred (in December 1980). Any land division would have been subject to City Ordinances governing the division of land at the time. The City's first land division ordinance was adopted in 1963 and subsequent amendments have been adopted thereto. Accordingly, with the City having determined no evidence to support the combined area of Tax Lots 16500 & 16600 as a Lot of Record, the Director may deem the unit of land as a Legal Lot only upon finding in support of either 3 (a) or 3 (b), which staff has addressed below.

In response 3 (a) of LLD approval (*The unit of land could have complied with the applicable approval criteria for creation of a lawful parcel or lot in effect when the unit of land was sold*) staff finds as follows: In review of the materials provided by applicant, staff is unable to determine the date when Tax Lots 16500 & 16600 were created to the size and configuration that exist today. In May of 1974, a survey of this area was recorded with Washington County (Record of Survey No. 15,185). The 1974 survey shows two lots of similar configuration to Tax Lots 16500 & 16600 (with exception to the flag configuration to one). While similar, the survey lot dimensions are different from the current configuration of Tax Lots 16500 & 16600 as shown on Tax Map 1S1-21BB. And, even though a survey of this area was recorded in May of 1974, staff cannot conclude this to be the date when both Tax Lots were created. Also, where 3 (a) refers to a time when the *unit of land was sold* as a point of reference for determining what land use ordinance would have applied, staff is uncertain if the Criterion should apply to first creation of these Tax Lots or a reconfiguration (and subsequent resale) at a later date. While staff is unable determine the date of Tax Lot creation and uncertain what date should apply under 3(a), staff has examined the record contained in City land use file BSDR 26-74 and finds the lot size and dimensions standards of the CS zone (or Neighborhood Commercial at the time) to be the same as they apply today. Staff also notes that building and site plans contain in BSDR 26-74 identify only one lot (the approx. area of Tax Lots 16500 & 16600 combined). Staff also notes that if both Tax Lots are combined, the office building would meet the minimum side yard setback of CS – which is 10 feet.

Because the applicant is requesting LLD based on the size and configuration shown for both lots combined, staff finds lot size and configuration to comply with current standards of the CS zone and these standards have consistently applied to properties zoned CS (or CN) since 1979.

In response 3 (b) of LLD approval (*The City, or County prior to annexation, approved a permit as defined in ORS 215.405 or 227.402 for the construction or placement of a dwelling or other structure on the unit of land after the sale, and such dwelling has all of the features listed in ORS 215.755(1)(a)-(e).*) Staff finds as follows:

1. As previously stated herein, the City approved addition to the office building at this location in 1979. The lot area and boundary is generally consistent to the size and

configuration that exists today – if the two Tax Lots are combined.

2. The office structure at 14250 SW Allen Blvd. has all the features listed in ORS 215.755(1)(a)-(e). These features include: intact exterior walls and roof structure, indoor plumbing consisting of a kitchen sink, toilet (and bathing facilities?) connected to a sanitary waste disposal system, interior wiring for interior lights, and a heating system.

Summary Finding for Criterion No. 3: For the reasons stated above, staff finds the applicant's proposal for LLD to satisfy Criterion No. 3 (a) and (b).

In response to Criterion No. 5 of LLD approval, the applicant's narrative states all documents have been submitted with this application. While staff concurs with this statement, staff also finds that one other land use application is necessary in this case and that this application (i.e., Final Land Division application) can be filed as a condition of LLD approval.

Pursuant to Section 40.47.15.1 (Conditions of LLD Approval) of Development Code: The City may impose conditions on the Legal Lot Determination to ensure compliance with applicable Code requirements. For a unit of land created by sale for which the City has made a LLD pursuant to Chapter 40.47., such unit of land shall not become a lawfully established parcel until the owner of the unit of land records a Final Land Division with Washington County, subject to review by the County Surveyor, and within 90 days after the city makes the Legal Lot Determination. The Final Land Division shall conform to the City's Legal Lot Determination and conditions thereof.

Although the language contained in 40.47.15.1.E does not refer to a City application for Final Land Division (described under 40.45.15.7) staff finds the Final Land Division application to be appropriate in this case, as first step before submitting a plat proposal to Washington County and subsequent recording. Staff also notes that Legal Lot Determinations are identified under the threshold description for Final Land Division. Therefore, by satisfying the conditions of approval, staff finds that the applications and documents related to the request, which will require further City approval, have been submitted to the City in the proper sequence.

Summary Finding for Criterion No. 5: For the reasons explained herein, staff finds that the unit of land (Tax Lots 16500 & 16600) to have been created by sale and therefore applies a condition of approval, as described under Section 40.47.15.1.E, requiring the applicant to record a plat with Washington County.

Summary Finding for the approval criteria under 40.45.15.7.C: For the reasons explained herein, staff finds that by satisfying the conditions of approval, **LLD2009-0002 (14250 SW Allen Blvd. – Legal Lot Determination)** meets the approval criteria

contained in 40.45.15.7.C. The Planning Director therefore approves LLD 2009-0002, subject to conditions as listed herein.

CONDITIONS OF APPROVAL

1. The applicant shall file with the City, the application for Final Land Division identified in Section 40.45.15.7 of the City Development Code. The application shall include a single lot or partition plat of the area consistent with the site plan (stamped "Exhibit A", of LLD 2009-0002, 14250 SW Allen Blvd., on file at City Hall). Any easements for the lots within and adjacent to the plat necessary to provide proper legal ingress, egress, and the provision of utilities shall be shown on the plat and granted to the benefit of applicable parties. City signatures to the plat are required. Also, materials submitted for Final Land Division application shall include the legal descriptions of all easements to be recorded or have been recorded to this area. After the City receives the Final Land Division application, and has deemed the application to be complete, the applicant shall submit the plat to Washington County Survey for review and subsequent recording. Thereafter, the applicant shall provide to the City, proof of recording the new plat from Washington County. **Proof of recording shall be submitted to City within 90 days after recording the plat for the combined area of Tax Lots 16500 & 16600 to be validated as a lawfully established Lot of Record.**
2. This determination and conditions of approval hereto shall expire after one year of the date of the decision.