



Wheeler County Planning Department

Matt Davis, Planning Director
PO Box 447, Fossil, OR 97830 * Phone (541) 763-2126 * Email: planning@co.wheeler.or.us

NOTICE OF DECISION Legal Parcel Verification

APPLICANT: Susan Snell
Martin Elliot & Snell, P.C.
PO Box 575
Tualatin, OR 97062

PROPERTY OWNER: Darrel McMichael (deceased)
PO Box 575
Tualatin, OR 97062

AGENT: Susan Snell (claiming successor)
PO Box 575
Tualatin, OR 97062

LOCATION: Tax Lot 1102 in Township 9 South, Range 23 East, Section 8
37941 Hwy 19-207, Fossil, OR, 97830

ZONING: Exclusive Farm Use (EFU)

ACREAGE: 2 +/- acres applicable to this application

REQUEST:

Applicant requests verification of the following described unit of land as a discrete, lawfully established parcel.

TOWNSHIP 9 SOUTH RANGE 23 EAST, W.M.

Section 8: A parcel of land in the NE1/4SE1/4, described as follows:
Beginning at a highway right-of-way post on the North side of the John Day Highway 200 feet, more or less, North and East of the house of Seller located in NE/14SE1/4; thence Southwesterly along the North line of said highway, 700 feet; thence on a line due North to the North line of NE1/4SE1/4; thence East along the North line of NE 1/4SE1/4 to a point due North of the point of beginning; thence on a line due South to the point of beginning.

Findings of Fact:

The subject land is within the Exclusive Farm Use (EFU) zone. The applicable parcel size standards in this zone are as follows:

- 160 acres to support a dwelling provided in conjunction with farm use.
- 80 acres for a farm parcel without a dwelling
- Minimum size necessary to support the use if a Non-Farm Parcel and Dwelling are established according to procedure.

The subject land is a remnant of a parcel originally granted to Joseph R. Thomas by the US Government on May 17th, 1932, under the authority of the 1862 Homestead Act (Patent Number 1055279). Said document was entered into the records of the Wheeler County Clerk on May 8th, 1939, as document number 1939-25956. According to US Census records, Mr. Thomas and his family operated a sheep ranch on the subject land, in conjunction with other contiguous lands.

On June 15th, 1935, Mr. Thomas recorded a deed vesting his wife, Irene Thomas, with an undivided one-half interest in and to the 360 acres conveyed to him by the Federal Government under the 1862 Homestead Act.

On June 10th, 1939, Joseph R. Thomas et al. conveyed the land encompassed by the John Day Highway (OR 19-207) right-of-way to the State of Oregon, by and through its State Highway Commission. This transaction is described by deed, duly recorded in the office of the Wheeler County Clerk as document number 1939-026074. This had the effect of creating two discrete parcels under the principle of intervening ownership, one on the North side of the Highway and one on the South side. The subject parcel was, at this point, a part of the Northern parcel along with contiguous lands and was not isolated as a result of this conveyance to the State.

In 1947, the first modern subdivision statute was enacted in Oregon. [Or Laws 1947, ch 346]. It applied only to divisions of tracts of land into four or more units defined variously as "lots," "tracts" or "parcels," and it required the preparation and recording of a "plat."

J.R. Thomas and Irene Thomas conveyed the 360 acres encompassing the subject land to Donald R. McQuinn and Levena McQuinn in 1966. The Bargain and Sale Deed describing the transaction was recorded by the Wheeler County Clerk as Document number 1974-51144.

In 1973, the state legislature expanded the subdivision statute to cover all land divisions [Or Laws 1973, ch 696]. Units of land in subdivisions were defined as "lots." Divisions of land into three units or less were defined as "partitions." The units created by partitions were defined as "parcels." "Major partitions" were divisions that included the creation of a street, and all other partitions were classified as minor. A graphic description of the division, referred to as a "map" rather than a plat, was required only for major partitions.

In 1980, Wheeler County adopted an updated Zoning Ordinance (No. 80-03) defining partitions using the same language contained in the above referenced statute and requiring partitions in order to lawfully divide lands in Wheeler County.

In 1981 the McQuinns contracted with Ralph E. and Doris R. Wilson, the latter agreeing to purchase the 2 acre +/- parcel under review today. The subject parcel was conveyed according to that agreement via Warranty Deed executed and recorded on Nov. 15th, 1983. It should be noted that there was no Partition Plat recorded in association with this transfer, and that an exhaustive search of Planning Department records did not yield a map or graphical representation of the partition.

On July 9th, 1981, the Wheeler County Planning Commission was convened to review a land use application submitted by Mr. and Mrs. Wilson proposing the establishment of a Non-Farm Parcel and Dwelling. The Commission found the proposal to be compliant with the Wheeler County Comprehensive Plan and applicable provisions of the Wheeler County Zoning Ordinance (WCZO), namely WCZO 2.100 (13) establishing criteria for approval of non-farm dwellings within the EFU zone, and WCZO Article 13 governing the approval of Conditional Use Applications. On that date, the Commission voted unanimously to approve the application. No opposition was recorded, and no appeal of the decision was filed during the following comment period.

The State of Oregon through its Department of Environmental Quality issued a permit for the construction of a new subsurface sewage system on Oct. 12th, 1981, to support a dwelling on the subject parcel. The supporting documents on record include a pre-cursor to the modern Land Use Compatibility Statement which indicates approval from Bea Donnelly as authorized representative of the Wheeler County Planning Department.

Exact date of construction of the dwelling is unavailable. The Wheeler County Assessor's Office has never assessed the dwelling as such and building codes records from that period are not accessible or nonexistent. Presently, the account summary lists a General Purpose Building, built in 1976, with a similar square footage as the existing dwelling. It must be considered as a possibility that an existing building was modified to serve a residential purpose by the Wilsons, but in the absence of verifiable records no official findings are herein made.

In 1985 the State Legislature amended ORS 92.010 [Or Laws 1985 ch 717] to clarify that lots and parcels shall remain "discrete" unless the lines are changed or vacated "as provided by law." Id. At § 3. No such action has been taken since the subject parcel was created in 1981.

On July 25th, 1990, a deed conveying the subject parcel to Patrick Shannon Thompson was recorded in the office of the Wheeler County Clerk as document number M-38-800.

On August 1st, 1991, the property was conveyed to Christopher Allan Thompson via a duly recorded deed, document number M-39-81.

On August 29th, 1991, Christopher Thompson conveyed the parcel to Darrel McMichael and Melissa McMichael via deed, document number M-39-98.

A Quitclaim Deed, document number 020002, was filed in the records of the Wheeler County Clerk on Dec. 19th, 2001, releasing all of Melissa McMichael's right, title, and interest in the parcel to Darrel McMichael.

On Aug. 26th, 2021, an Affidavit of Claiming Successor of Intestate Estate was recorded in the office of the Wheeler County Clerk, naming the affiant, Susan E. Snell, as heir/claiming successor to the small estate of Darrel McMichael under ORS 11.4505 (1).

Susan Snell, acting in her capacity as claiming successor, submitted a complete application for a Legal Parcel Verification of the subject parcel to the Wheeler County Planning Department on Oct. 7th, 2021.

Analysis:

The subject parcel was created in 1981 after review and approval of the property as a homesite for a Nonfarm Dwelling under applicable land use law by the proper jurisdictional authority.

At the time, Wheeler County Zoning Ordinance (WCZO) required a Partition to lawfully divide property. No Partition Plat was recorded. Neither did an exhaustive search of Planning Department records uncover any map or graphical representation of the proposed partition.

However, because "partition" was defined in the local ordinance via reference to the statutory definition, which at the time only required a graphic representation of a proposed division in the instance of a "Major partition"; and because major partitions were defined as those land divisions establishing three or fewer parcels which included the creation of a street; and because no street was created as part of the establishment of the single subject parcel, no legal requirement to submit a map, plat or other visual representation of a proposed division existed.

Current requirements for the preparation and recordation of Partition Plats for all land divisions were not enacted until January 1, 1990, following action by the 1989 legislative assembly.

Given that appropriate procedure to establish a nonfarm parcel and dwelling was followed by the contract

purchasers of the subject parcel in 1981; permitting from Oregon's Department of Environmental Quality for the construction of a septic system to support residential use was sought, reviewed by an authorized representative of the Wheeler County Planning Department, and subsequently approved; and because the parcel has been in continuous residential use throughout the intervening 40 years, it is considered that a reasonable expectation of residential use, buildability and recognition of the parcel as being lawfully created has been established. Any other determination would be to punish a landowner for the imperfect record keeping of the jurisdictional land use and assessment/taxation authority, or application of current land use law to land uses predating the adoption of said law. Both are untenable positions.

Conclusion:

Based on the findings of fact and analysis presented, the subject parcel, described as Tax Lot 1102 in Township 9 South Range 23 East W.M., is hereby verified as a lawfully created and discrete unit of land under the Administrative Provisions of Article 9 of the Wheeler County Zoning Ordinance § 9.1(3)(a). Notification to adjacent landowners is not required by statute as this verification does not constitute a land use decision under ORS 197.015(10).

Parcel verification procedure is not intended to determine development potential on any parcel thereby verified as lawfully created. However, in this instance the process provided adequate grounds to state that residential development specifically related to a single nonfarm dwelling, including application for replacement or modification thereof, is highly likely to meet approval criteria from a land use perspective. No such statement can be made regarding any other proposed land use. Any proposed development of the parcel herein verified shall be subject to the Wheeler County Zoning, Subdivision, Partitioning and Land Development Ordinance or other subsequently approved ordinance, along with applicable forms and fees required at the time of application.

Dated this 27th Day of October 2021



Matt Davis
Wheeler County Planning Director