



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: July 17, 2019

Department: Public Works

Agenda Planning Date: July 11, 2019

Time required: 15 min.

☐ Audio/Visual aids

Contact: Joe Fennimore

Phone: 503-566-4177

Department Head Signature:

Brian Nicholas

TITLE

Public hearing for Zone Change/Comprehensive Plan/Property Line Adjustment (ZC/CP/PLA) Case 18-007/Tofte Family LLC.

Issue, Description & Background

Tofte Family LLC submitted an application to change the comprehensive plan designation from Rural Residential to Commercial and the zone from AR (ACREAGE RESIDENTIAL) to C (COMMERCIAL) on a 7.15 acre portion of a 9.15 acre parcel, and to adjust the property lines on a 19.86 acre parcel and the 9.15 acre parcel to create a 27.01 acre parcel and a 2.00 acre parcel at 2675 Hanneman Lane SE, Turner. The hearings officer conducted a public hearing on February 6, 2019, and on May 31, 2019, issued a recommendation to approve ZC/CP/PLA18-007 if the applicant provides additional input on the type of uses to be retained.

The applicant plans future expansion of its existing Enchanted Forest theme park by adding the 7.15 acre area proposed for the zone change to its existing parcel. The hearings officer notes that in 1985 the property containing the theme park was rezoned to Commercial General (CG) to allow for the park to be expanded. Since the Commercial General zone contained a large number of uses, a limited overlay was applied to restrict the number of uses permitted on the property.

In July 2004, the county completed a Periodic Review Work Program Task to bring rural zoning into compliance with Goal 14 (Urbanization). As a result, the rural zone code was amended by repealing chapters and replacing them with chapters that were acknowledged as being rural, the CG zone was repealed, and the Commercial (C) zone was created. At the same time rural properties were then rezoned and limited use overlays were removed.

In finding #29, the hearings officer discusses the 1985 limited use overlay and believes a limited use overlay zone may be appropriate in this instance as the site is near and abutting residentially zoned property. In addition, the hearings officer indicates the board should consider applying specific vegetation retention and a special setback to ensure compatibility.

If satisfactory additional evidence is provided, the hearings officer recommends the request be granted subject to conditions.

Financial Impacts:

None

Impacts to Department & External Agencies

None



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Options for Consideration:	<div>1. Continue the public hearing. 2. Close the public hearing and leave the record open. 3. Close the public hearing and approve, modify, or deny the request. 4. Remand the matter back to the hearings officer.</div>
Recommendation:	<div>The hearings officer recommends the request be approved.</div>
List of attachments:	<div>Hearings officer's recommendation</div>
Presenter:	<div>Joe Fennimore</div>
<div>Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)</div>	
Copies to:	<div>Joe Fennimore - gfennimore@co.marion.or.us</div>

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:)	Case No.	ZC/CP/PLA 18-007
)		
)	Clerk's File No.	
)		
Tofte Family LLC)	Zone Change/Comprehensive Plan Amendment/	
)	Property Line Adjustment	

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Tofte Family LLC to change the comprehensive plan designation from Rural Residential to Commercial and the zone from AR (ACREAGE RESIDENTIAL) to C (COMMERCIAL) on a 7.15 acre portion of the 9.15 acre parcel, and to adjust the property lines on a 19.86 acre parcel and a 9.15 acre parcel to create a 27.01 acre parcel and a 2.00 acre parcel at 2675 Hanneman Lane SE, Turner, Marion County, Oregon (T8S; R3W; Section 36C; tax lots 200 and 1700).

II. Relevant Criteria

Standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP), Marion County Code (MCC), especially chapters 123, 128, 145 and 172, OAR Chapter 660 Division 4, and Statewide Land Use Planning Goals.

III. Public Hearing

A public hearing was held on this application on February 6, 2019. The Planning Division file was inventoried and made a part of the record. Files ZC/CP 06-005 and AR 92-25 were also made a part of the record. The following persons appeared and provided testimony on the application:

- | | | |
|----|---------------|----------------------|
| 1. | Lisa Milliman | Planning Division |
| 2. | Mike Keane | Applicant's Attorney |
| 3. | Anne Lambert | General |

A February 11, 2019 letter from J. Michael Keane, with attached warranty deed was entered into the record as exhibit 1. No objections were raised as to notice, jurisdiction, conflicts of interest, evidence or testimony.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is made up of two parcels owned by Tofte Family LLC. Tax lot 200 is 19.86 acres and is zoned and designated for commercial use. This and other C zoned properties house the Enchanted Forest amusement park. Tax lot 1700 is zoned and designated for residential use and contains a dwelling. Applicant, Tofte Family LLC, asks to change the zone from AR to C and the MCCC designation from Rural Residential to Commercial on 7.15 acres of tax lot 1700, and to adjust the property lines between tax lots 200 and 1700 to create a 27.01 acre C zoned parcel and a 2.00 acre AR zoned parcel. The subject parcels are within sensitive groundwater overlay (SGO) and geologically hazardous areas overlay (GHAO) zones.
2. Tax lot 1700 is on the north side of Hanneman Lane SE about 1,500' east of its intersection with Enchanted Way SE. A July 18, 1973 warranty deed, recorded in the Marion County deed record at volume 757, page 517, conveyed tax lot 1700 in its current configuration to a previous owner. The parcel was later conveyed to Tofte Family LLC. MCC 17.110.427 defines a parcel as legally established if created by deed prior to September 1, 1977. The 1973 deed shows this parcel was legally created for land use purposes. Tax lot 200, fronting Enchanted Way, was the subject of land use cases AR 92-25 and ZC 85-9, and is also considered legally created for land use purposes.
3. Many surrounding properties are zoned C and contain Enchanted Forest or recreational vehicle (RV) park development. Other surrounding properties are zoned SA (Special Agriculture) and are in farm or woodlot use.
4. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Public Works Land Development and Engineering Permits (MCPW LDEP) commented:

ENGINEERING REQUIREMENTS

- A. The private access easement, Hanneman Lane, is served from Enchanted Way, which is under ODOT jurisdiction. Prior to issuance of building permits, the Applicant will need to provide evidence to MCPW Engineering of meeting ODOT access requirements, if any.
- B. The subject property is within the unincorporated area of Marion County and will assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R.
- C. The County requires any development having 0.5-acre or more of impervious (hard) surface to provide storm water detention. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved by Public Works prior to issuance of a certificate of occupancy.

ENGINEERING ADVISORIES

- D. According to Marion County records, there exists a 30-foot wide road easement, centered on the property boundary between tax lot 083W36C01700 and 083W36C01600 to serve as access for the otherwise landlocked parcel, tax lot 083W3600600. Access to this parcel should not be restricted.
- E. If total ground disturbing activities are equal to or greater than 1 acre, a DEQ [Department of Environmental Quality] 1200-C Construction Stormwater permit will likely be required by Oregon DEQ. Please contact DEQ for determination. Proof of coverage under a permit may be required by Marion County prior to building permit issuance.
- F. The Applicant is advised that construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.

Marion County Tax Office commented that 2018-2019 property taxes on the properties are paid, that a potential additional tax liability may exist that may need to be paid prior to a property adjustment, and that under ORS 92.095, all delinquent taxes and interest as well as taxes which have become a lien during the tax year, must be paid before a partition can be recorded.

Oregon Department of Land Conservation and Development (DLCD) acknowledged receipt of the proposed comprehensive plan amendment notice.

Other contacted agencies failed to comment or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

'Preponderance of the evidence' means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If the evidence for every criterion is in applicant's favor, then the burden of proof is met and the application must be approved.

PLANNING AND ZONING IN EXCEPTION AREAS

2. OAR 660-004-0018 contains requirements for plan designation and zoning in exception areas:
 - (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.
 - (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):
 - (a) That are the same as the existing land uses on the exception site;
 - (b) That meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
 - (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities," if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;
 - (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial

use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.
- (4) "Reasons" Exceptions:
 - (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.
 - (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.
 - (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

MCCP Appendix A, books 1 through 3, adopted as part of the 1980 MCCP, contain maps showing proposed exception areas, and narratives justifying proposed exceptions. The introduction to Appendix A, book 1 explains that all agricultural and forest lands were inventoried to determine comprehensive plan designations for lands in Marion County. During that process, the county found some lands were already developed for, committed to or needed for, non-farm and non-forest uses, and asked the state to approve exceptions to statewide farm and forest planning goals for those properties. Appendix A, book 1 proposed exception area 29.2, Sunnyside-Turner Interchange, which included the subject properties. The state did not contest the area 29.2 exception for the subject properties (see Appendix A, book 2), and the exception became effective with adoption of the 1980 MCCP. The exception recognized that some properties were in commercial use (shown by the darkened squares on the area 29.2 map, including the Enchanted Forest). Residential uses were also recognized in the exception area. Commercial use of the subject AR zoned property will continue existing types of development in the exception area. OAR 660-004-0018(a) is met. No new goal exception is required.

MCCP AMENDMENT

3. Under MCCP plan amendment policy 2, plan changes directly involving five or fewer properties are quasi-judicial amendments. Quasi-judicial comprehensive plan amendments are reviewed by zone change procedures established in MCC title 17 and may be processed simultaneously with a zone change request. The proposed comprehensive plan amendment involves two parcels in one ownership and is a quasi-judicial plan amendment request being processed with a zone change application.
4. DLCD must be notified of any comprehensive plan amendment. DLCD was notified but provided no comments on the proposal.
5. **Statewide planning goals.** As stated in OAR 660-004-0018(1) above, exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements. The MCCP plan amendments section implements the OAR by requiring comprehensive plan amendments to be consistent with statewide planning goals.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Notice and the hearings process before the hearings officer and BOC provide an opportunity for citizen involvement. Goal 1 is satisfied.

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

As part of this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site-specific. Applicant proposes a site-specific MCCP amendment. The Planning Division notified Turner Fire District (TFD), Cascade School District, Marion County departments, the Oregon Department of Transportation (ODOT) and DLCD of the proposed comprehensive plan amendment. MCPW noted engineering requirements and advisories but requested no conditions of approval. The county tax office submitted tax information on the property. No other comments were received. The BOC will consider agency comments in evaluating this application. Goal 2 will be satisfied.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

The subject property is in an existing goal 3 exception area. Goal 3 does not apply.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use

on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

The subject and surrounding properties are wooded but not MCCP-identified forest lands. Goal 4 is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

No MCCP-identified goal 5 resources are on or near the subject property. Goal 5 is not applicable.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

No development is currently proposed, but any future development will be subject to sensitive groundwater overlay zone requirements as well as septic permitting and stormwater detention regulations. No significant particulate discharges are anticipated. Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

The subject property is not in an MCCP-identified floodplain area, but is in a geologically hazardous area overlay zone. MCC chapter 17.182 requirements will be examined on any development of the subject property. Goal 7 is satisfied.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No goal 8 resources are identified on the subject site or implicated by this application. This goal is not applicable.

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

OAR chapter 660, Division 009 does not require or restrict planning for industrial and other employment uses outside an urban growth boundary (UGB), but counties must comply with the division requirements within UGBs. The subject property is not within a UGB. Goal 9 is not applicable.

Goal 10: Housing. To provide for the housing needs of citizens of this state.

OAR 660-008 defines standards for compliance with goal 10 regarding adequate numbers of needed housing units and efficient use of buildable land within urban growth boundaries. The subject property is not within a UGB. Goal 10 does not apply.

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The current Enchanted Forest theme park uses a rural level of services. The proposed expansion area is subject to the same requirements, including on-site water and wastewater services. Goal 11 is satisfied.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

The subject property fronts Hanneman Lane SE, a private easement that connects to Enchanted Way, an ODOT facility. The main access to the park is also from Enchanted Way and will serve this expansion. ODOT was notified of the proposal but did not comment. Marion County does not control roadway facilities connected with this proposal. OAR 660-012-0060 and goal 12 are not applicable to Marion County in this instance, but a condition of approval requiring applicant to provide proof of conformance with ODOT requirements prior to development of the subject property will ensure that goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

No development is proposed at this time. Normal commercial use associated with the current theme park will not significantly impact energy consumption. Goal 13 is satisfied.

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The proposed commercial use will be consistent with and incorporated into the adjacent theme park. No urban level services will be required. The expansion will not lead to urbanization of the area. Goal 14 is satisfied.

Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. The subject site is not within the Willamette River Greenway, or near any ocean or coastal-related resources. These goals do not apply.

Applicant's proposal is consistent with statewide planning goals.

6. **MCCP policies.** The MCCP contains no specific plan amendment review criteria, but an amendment must be consistent with applicable MCCP policies:

General rural development policy 2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.

The subject property is not on a public road. No strip-type development will occur. General rural development policy 2 is satisfied.

General rural development policy 3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best-suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

Applicant plans future expansion of its existing Enchanted Forest theme park business onto the 7.15 acres proposed for re-designation and rezoning. The theme park, established prior to adoption of the 1980 M CCP, is in the Sunnyside-Turner Interchange goal 3 exception area. The 7.15-acre area is also in the exception area. Agricultural goals and policies do not apply to these rural properties. Enchanted Forest is open seasonally and blends in with its wooded landscape. The 1985 zone change imposed conditions and a limited use overlay zone on the property to help ensure rural compatibility of the park. Similar limited use overlay and conditions, along with setbacks, vegetative buffers and so on can be applied to the proposed expansion area to help ensure compatibility with existing development. With limited use overlay and conditions as set out by the BOC, general rural development policy 3 can be satisfied.

Rural development policy 1. Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.

The subject property is not in an unincorporated community. The Enchanted Forest theme park is a long established facility that, as noted in BOC ordinance 723 from ZC 85-9, "incorporates the ideal of environmental protection and stewardship of natural resources with the development of a recreational facility." The use could not, by its nature, be dropped into an unincorporated community, because the CC (Community Commercial) zone does not allow or conditionally permit amusement park facilities. Rural development policy 1 is an aspirational policy not applicable to this use.

Rural services policy 1: The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The current Enchanted Forest facility has electrical service and on-site water and wastewater service. No new development is proposed at this time, but on development, applicant will be required to meet all ODOT, DPW and Building Inspection requirements. And, at just over seven acres, the subject expansion area is, more likely than not, capable of providing additional water and sewage disposal service if needed. Services are adequate for similar rural commercial development at this site. This policy is met.

Rural service policy 2: It is the intent of Marion County to maintain the rural character of areas outside of urban growth boundaries by allowing those uses that do not increase the potential for urban services.

As discussed above, water, sewer and other services can be provided at the site. Urban levels of services will not be required. This policy is met.

Rural service policy 3: Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

As discussed above, water, sewer and other services can be provided at the site. Urban levels of services will not be required. Applicant will be required to meet all ODOT, DPW and Building Inspection requirements. This policy is met.

7. With conditions and limited use overlay as determined by the BOC, the proposed comprehensive plan amendment could be appropriate.

ZONE CHANGE

8. MCC 17.123.060 contains the following zone change criteria:

- (A) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and description and policies for the applicable land use classification in the Comprehensive Plan; and
- (B) The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
- (C) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property and,
- (D) The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size, or other factors; and
- (E) If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

9. If the comprehensive plan amendment is approved, the proposed C zone will be appropriate for the Commercial comprehensive plan designation. As noted above, with

conditions and a limited use overlay zone, the subject application can conform to applicable MCCP policies. MCC 123.060(A) can be satisfied.

10. Tax lot 1700 is adjacent to and would become an extension of the existing C-zoned Enchanted Forest theme park to the north and west and would not interfere with the theme park or properties beyond the current theme park. A C-zoned recreational vehicle park property abuts tax lot 1700's eastern 100' along its northern boundary. The RV park continues east to a C/SA, split-zoned parcel. The SA zoned portion of that parcel is adjacent to tax lot 1700's eastern boundary. The remaining tax lot 1700 boundary also abuts SA-zoned properties that are mostly heavily wooded near the subject property. Development is not immediately proposed, but Enchanted Forest is a seasonal business so any potential impacts would largely occur during summer months. Part of the reason the theme park has been compatible with surrounding uses is because the development has been considerate of the terrain and blended with the wooded site. The park has also been subject to conditions of approval and use of a limited use overlay zone to restrict incompatible uses. Zone changes may be conditional, so using similar conditions and overlay here will help ensure compatibility with SA zoned lands. A condition barring public access to the park from Hanneman Road, a narrow and winding private access, should also be imposed to ensure access for other properties using the easement is not degraded. With conditions and a limited use overlay, the proposed change can be appropriate considering the surrounding land uses and the density and pattern of development in the area. As conditioned, the proposed zone change would be appropriate under MCC 17.123.060(B).
11. Marion County does not control roadway access to the subject property but a condition can require applicant to meet ODOT requirements on development. On-site water supply and wastewater disposal are required for development. A condition of approval can require compliance with county sanitation requirements. As conditioned, adequate public facilities, services, and transportation networks are in place, or will be provided concurrently with the development of the property, and MCC 17.123.060(C) will be met.
12. The Enchanted Forest theme park is a long-established facility on more than 20 acres and is constructed to blend into the terrain and retain the wooded nature of the property. It is not a use that could be relocated, so any expansion needs to be adjacent. Enchanted Way and I-5 are to the west of the existing theme park. RV park property is to the north and east. Three already developed AR properties averaging about 2.5 acres, and a 4.67-acre farm zone property are south of the existing park. Expanding onto surrounding SA zoned land would require an exception to the agricultural lands statewide planning goal and take agricultural land out of agricultural use. The subject property is already in an exception area and no agricultural displacement would be necessary. Other lands in the county already designated for the proposed use are unavailable or not as well suited for theme park use. MCC 123.060(D) is met.
13. The C zone is the only commercial zone allowed outside an unincorporated community. MCC 17.123.060(E) is not applicable.

14. With approval of the comprehensive plan designation amendment, conditions and a limited use overlay as determined by the BOC, zone change criteria could be met and the application approved.

PROPERTY LINE ADJUSTMENT

15. The AR and C zone chapters contain no property line adjustment criteria. The C zone contains no lot size requirement, but the AR zone requires a two-acre minimum lot size. Tax lot 1700 would be 2.00 acres after the property line adjustment and will meet the minimum lot size. MCC 17.172.120 applies to all property line adjustments:
 - (A) Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the Planning Director.
 - (B) Except as provided in (A) of this section, no approval is necessary for property line adjustments in the RM (multiple family residential), C (commercial), CC (community commercial), ID (interchange district), I (industrial), or IUC (unincorporated community industrial) zones.
 - (C) Except as provided in subsections (A) and (B) of this section, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10% of the total land area of the smallest affected parcel.
 - (D) Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 to 92.190.
 - (E) Property line adjustment deeds shall be recorded with the Marion County clerk's office prior to submitting the property line adjustment survey, if a survey is required. Deed recording reference numbers shall be noted on the required survey.
16. Regardless of how the properties involved here came into being, the property line adjustment is going through a land use process requiring BOC decision.
17. C-zone property line adjustments require no approval but county approval is required per MCC 17.172.120(C). The property line adjustment is going through a land use process.
18. The smallest parcel affected is 9.15 acres. Ten percent of 9.15 acres is .915 acre. The request is to reduce the parcel to two acres, a more than 10% adjustment. The property line adjustment is going through a land use process.
19. Re-plat determinations are handled through the surveyor's office.
20. Property line adjustment deed recordation can be made a condition of any approval.

21. The property line adjustment is recommended.

SENSITIVE GROUNDWATER OVERLAY ZONE

22. The subject property is in the SGO zone. Under MCC 17.181.040, all development permits for new land uses that rely on water from exempt-use wells in the SGO zone shall be reviewed by the county to determine compliance with MCC chapter 17.181. No specific property development is proposed at this time. Chapter 17.181 will be applied at development.

GEOLOGICALLY HAZARDOUS AREAS OVERLAY ZONE

23. Portions of the subject property is in the GHAO. Under MCC 17.182.010, the intent of chapter 182 is to protect hazard areas by requiring professional evaluation and establishing requirements for development on hazard zone sites. No development is proposed at this time. Chapter 17.182 will be applied at development.

LIMITED USE OVERLAY ZONE

24. Under 17.176.010, the purpose of the LU (limited use overlay) zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if certain criteria are met. However, on a particular property certain uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses, and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone.

The limited use overlay zone may also be applied to comply with use limitations for a goal exception required by OAR 660-004. It is the intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.

25. Under MCC 17.176.020, when the limited use overlay zone is applied, the uses identified in the underlying zone shall be limited to those permitted or conditional uses specifically referenced in the ordinance adopting the limited use overlay zone. Until the overlay zone has been removed or amended the only uses permitted on the property shall be those specifically referenced in the adopting ordinance. Uses that would otherwise be permitted, or permitted subject to a conditional use permit, may only be allowed if the list of permitted or conditional uses in the limited use overlay zone is amended or the limited use overlay zone is removed from the property.
26. Under MCC 17.176.030, the limited use overlay zone is applied at the time the underlying zone is being changed. It shall not be necessary to mention in the hearing notice of a

rezoning application that this overlay zone may be applied. The ordinance adopting the overlay zone shall include findings showing that: (A) no zone has a list of permitted and conditional uses where all uses would be appropriate; (B) the proposed zone is the best suited to accommodate the desired uses; (C) it is necessary to limit the permitted or conditional uses in the proposed zone; and (D) the maximum number of acceptable uses in the zone have been retained as permitted or conditional uses. The ordinance adopting the overlay zone shall by section reference, or by name, identify those permitted uses in the zone that become conditional uses and those permitted or conditional uses that are deleted from the underlying zone. A use description may be segmented to delete or require a conditional use for any aspect of a use that may not be compatible.

27. The C zone is the only rural zone allowing amusement and recreation uses. No other zone would be appropriate for this use. The C zone allows many other uses, such as auto wholesaling, warehousing and so on. Not all of the C zone's list of permitted and conditional uses would be appropriate. MCC 17.176.030(A) is satisfied.
28. The C zone is the only rural commercial zone applicable outside of an unincorporated community and the only zone allowing amusements and recreation. C is the zone best suited to accommodate theme park uses. MCC 17.176.030(B) is met.
29. In 1985, tax lot 200 was rezoned from AR to CG. A limited use overlay zone and conditions were adopted in BOC ordinance 723. The LU overlay allowed only certain CG uses, referred to by then-current zoning code provisions:
 1. The CR zone uses in section 141.010(b)(1), (6), (9), (10), (12), and (g)(6), (7), (8), (15), (24) and (53) pursuant to Section 141.010(a).
 2. Section 141.010(j) Billboards pursuant to Section 141.010(a).
 3. The uses in Section 142.010(b)(5), (12), (14), (17) and (18).

The hearings officer takes official notice of the county rural zoning code in effect at the time to show the uses allowed under the cited code provisions¹:

Chapter 141.010, USE

(b) Amusement and recreation

- (1) Auditorium
- (6) Game room card room
- (9) Miniature golf course
- (10) Motion picture theater
- (12) Pony riding ring (no stable)
- (g) Retail
- (6) Camera and photographic store
- (7) Candy, nut and confectionary

1 The hearings officer placed excerpts of referenced zoning ordinances in the record to aid BOC review of the application.

- (8) Dairy products store (no processing, sales on premises only)
- (15) Eating place, restaurant, café (may serve liquor), caterer, box-lunch provider, coffee shop, dining room and tea room
- (24) Gift, novelty, curio and souvenir shop
- (53) Vending machine, automatic merchandising
- (j) Billboards

Chapter 142.010, USE

- (b) Amusement and recreation
 - (5) Circus
 - (12) Penny arcade
 - (14) Shooting gallery
 - (17) Swimming pool
 - (18) Theatre

CG and CR zones no longer exist. MCC 143.020(M) allows amusement and recreation use (SIC 79, except 7948 racing facilities) in the C zone. SIC refers to the U.S. Department of Labor's Standard Industrial Classification manual. The hearings officer takes official notice of the SIC manual (on-line version).²

Applicant agreed to a LU overlay on the property similar to the overlay on tax lot 200, but with elimination of previous commercial zones and adoption of the current C zone, there are some uses that do not easily convert to SIC 79 uses. Some uses allowed under tax lot 200's overlay are in SIC manual classifications other than SIC 79, such as motion pictures (SIC 7832), camera and photographic store (SIC 5946) and so on. And, some SIC 79 uses extend beyond what was allowed in the 1985 overlay zone and may not be appropriate to this particular property. The hearings officer believes a limited use overlay zone is appropriate in this case because the expansion site will abut or be near residential and agricultural land. The hearings officer also believes applicant is in a better position to initially suggest which uses should be included in or excluded under the new overlay zone. **The hearings officer recommends applicant submit a listing of proposed uses for the expansion area to help the BOC determine which uses should be limited and how they should be limited (conditional use or eliminated from the zone) under MCC 17.176.030(C).**

- 30. With input from applicant regarding potential C-zone uses, the BOC can determine the maximum number of acceptable uses in the C zone to retain as permitted or conditional uses under MCC 17.176.030(D).
- 31. Under MCC 17.176.040, the official zoning map shall be amended to show an LU suffix where the limited use overlay zone has been applied.
- 32. Under MCC 17.176.050, in addition to limiting the uses in the zone the county may require approval of the location of buildings, access and parking, screening and other site planning considerations in order to ensure the compatibility of the permitted uses with the area. This requirement shall be added by specific reference in the adopting ordinance. The ordinance

² The hearings officer placed a major group 79 and subgroup printout in the record to aid BOC review of the application.

shall indicate any special concerns or locational requirements that must be addressed in the site plan and approved by the planning director or designee.

The BOC should contemplate applying specific vegetation retention and special setback conditions to ensure compatibility with the uses the BOC decides to retain in the C zone.

VI. Recommendation

It is hereby found that applicants should provide additional input on the number and type of uses that should be retained, and how they should be retained, in the proposed rezone area. With additional input, it is likely applicant will meet the burden of proving applicable standards and criteria for approval of a comprehensive plan amendment from Rural Residential to Commercial, zone change from AR to C, and property line adjustment will be met. With additional information sufficient to allow the Marion County Board of Commissioners to fashion appropriate conditions and limited use overlay zone, the applications should be approved. The following suggested conditions are suggested for consideration:

1. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office prior to submitting a plat. Deed recording reference numbers shall be noted on any required survey.
2. Resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
3. Applicant shall obtain all permits required by the Marion County Building Inspection Division.
4. Hanneman Lane shall not be used for commercial access to the site. Development of the property shall not obstruct access to Hanneman Lane SE from other properties entitled to use the Hanneman Lane easement.
5. Applicant shall meet any ODOT requirements for permits, access, right-of-way, traffic analysis, mitigation and frontage improvements.
6. Property line setbacks should be determined by the BOC after review of additional information provided by applicant.
7. Natural vegetation should be left in place as a buffer between the theme park and surrounding residential and farm uses, in an amount determined by the BOC after review of additional information provided by applicant.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 31st day of May, 2019.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Tofte Family LLC
460 Myers Street S.
Salem, OR 97302

J. Michael Keane
Garrett Hemann Robertson, P.C.
1011 Commercial Street NE
Salem, OR 97301

Anne Lambert
P.O. Box 482
Turner, OR 97392

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Meriel Darzen
1000 Friends of Oregon
133 SW 2nd Avenue, Suite 201
Portland, OR 97204

Agencies Notified

Planning Division

(via email: gfennimore@co.marion.or.us)

(via email: breich@co.marion.or.us)

(via email: lmilliman@co.marion.or.us)

Code Enforcement

(via email: bdickson@co.marion.or.us)

Building Inspection

(via email: twheeler@co.marion.or.us)

(via email: mpuntney@co.marion.or.us)

Assessor

(via email: assessor@co.marion.or.us)

PW Engineering

(via email: jrassmussen@co.marion.or.us)

(via email: mhepburn@co.marion.or.us)

(via email: mknudsen@co.marion.or.us)

TFD

(via email: jonr@turnerfire.com)

DLCD

(via email: angela.camahan@state.or.us)

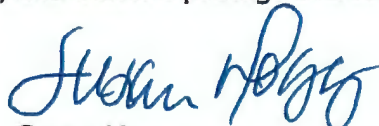
ODOT

(via email: odotr2planmgr@odot.state.or.us)

Aileen Kaye (AAC Member No. 1)
10095 Parrish Gap Road SE
Turner, OR 97392

Laurel Hines (AAC Member No. 1)
10371 Lake Drive SE
Salem, OR 97306

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 31st day of May, 2019, and that the postage thereon was prepaid.



Susan Hogg
Secretary to Hearings Officer



GARRETT HEMANN ROBERTSON P.C.

RECEIVED

JUL 11 2019

Marion County
Planning

Willamette Professional Center
1011 Commercial St. NE
Salem, Oregon 97301-1049
Ph: (503) 581-1501
Fax: (503) 581-5891
www.ghrlawyers.com

July 11, 2019

Via First Class Mail and

Via Email: gfennimore@co.marion.or.us

Marion County Board of Commissioners
c/o Joe Fennimore
5155 Silverton Rd NE
Salem, OR 97305

*Re: Our Client: Tofte Family LLC
Applications for Zone Change/Comprehensive Plan Amendment
and Property Line Adjustment
Our File No. 84902003*

Dear Marion County Board of Commissioners:

As you are aware, this office represents the Tofte Family LLC ("Tofte" or "applicant") regarding Case No. 18-007 in the matter of applications for a zone change, comprehensive plan amendment, and property line adjustment. In Hearings Officer Ann Gasser's Order in this matter dated May 31, 2019, the Hearings Officer requested that Tofte provide supplemental evidence and materials for the record in response to certain questions raised in the Order. Please consider this letter our supplemental admission of evidence and materials.

The Hearings Officer recommended that applicant submit a list of proposed commercial uses for the portion of the property to be re-zoned Commercial, so that the Board can determine how the permitted uses in the rural Commercial zone may be limited through a Limited Use Overlay zone. However, there is no need for a Limited Use Overlay zone to be applied to this property if the goal is to restrict commercial uses to those compatible with a rural area. This is because the Commercial zone set forth in MCZO 17.145.080 is a rural commercial zone with enumerated permitted and conditional uses that are already specific to rural commercial properties. The zone is designed to protect nearby rural activities and neighboring property owners from certain urban commercial uses that might otherwise conflict with this environment.

At the time that the Limited Use Overlay zone was originally applied to the property that Enchanted Forest Theme Park is located on, there was no distinction between urban and rural commercial zones. Therefore, the Board at that time applied a Limited Use Overlay zone to the property that specified which commercial uses from the various existing commercial zones were permitted – all in an effort protect the rural character of the area. Since then, in 2004, the Board adopted Ordinance No. 1191, which condensed the various applicable commercial zones and



created the current rural Commercial zone, codified at MCZO 17.145.080. *See* Marion County Ordinance No. 1191. This is the zone that is requested by Tofte in the subject application. The purpose of this overhaul of the then-current commercial zones was to create a new Commercial zone that is sensitive to rural needs and complies with Statewide Land Use Planning Goal 14 (urbanization for rural exception areas). *Id.* at Ex. F. The Board found that the new rural Commercial zone complies with the Marion County Comprehensive Plan related to limiting rural development and preserves the rural nature of the use without negatively impacting neighboring parcels. *Id.* Furthermore, limited use overlays like those that were previously applied to commercial zones for the purpose of preserving their rural character (as with the Enchanted Forest Theme Park parcel) no longer need to be used for that purpose due to the creation of the current rural Commercial zone and the restrictions set forth therein. *Id.* at Attachment 4 to Ex. F.

Given that the current rural Commercial zone already specifies permitted and conditional rural commercial uses in MCZO 17.145.080, a Limited Use Overlay zone is unnecessary in this case so long as Tofte agrees to comply with all requirements set forth in the rural Commercial zone, including those restricting commercial uses and building floor area on the property. Tofte agrees to such an obligation.

The Hearings Officer also suggested that the Board contemplate applying special setback conditions to ensure compatibility with uses in the rural Commercial zone. In order to ensure that the character of the surrounding rural area is not disrupted by the uses in this Commercial zone, the Tofte Family LLC proposes that the Board apply a special setback of 20 feet from the rural Commercial zone property line for all new structures on adjacent parcels. This special setback requirement sets a minimum setback that is greater than or equal to the general minimum setbacks specified in nearby zones for adjacent properties. *See, e.g.*, MCZO 17.128.060 (10-20 feet); MCZO 17.137.100 (20 feet). The applicant also agrees to comply with the setback requirements in MCZO 17.145.080(B)(2) for all structures it constructs on the portion of the property re-zoned as rural Commercial.

It should also be noted that the nearest residence, which is located on the portion of the property to remain zoned Acreage Residential, is already 100 feet from the adjacent Special Agriculture zone in compliance with MCZO 17.128.050. Other homes are at least 100 feet from the property line as well.

The Hearings Officer further suggested that the Board consider applying specific vegetation retention requirements to the property re-zoned rural Commercial. This suggestion is an effort to maintain the rural character of the area, protect the natural environment, and blend the theme park into the landscape as has been done over the past several decades. Applicant proposes that the current natural vegetation be retained upon development because this will maintain the natural character and applies the same design features and landscape as the current development. This will lead to a uniform development.

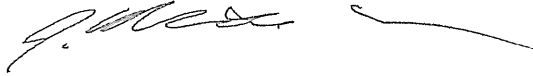
As for the other conditions suggested for consideration by the Hearings Officer, Tofte agrees to record property line adjustment deeds that describe lots in significant conformity to the site plan submitted with the applications. Tofte agrees to obtain any permits required at the time of proposed development and to meet any ODOT requirements in the process. Lastly, Hanneman

Marion County Board of Commissioners
July 11, 2019
Page 3

Lane will not be used for commercial access to the theme park and any development on the property will not obstruct any right to use this road.

This supplemental admission of evidence and materials for the record shall supplement and add to all materials previously submitted by the applicant for this Case No. 18-007. If you have any questions regarding this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Michael Keane", followed by a long horizontal flourish.

J. Michael Keane
mkeane@ghrlawyers.com

JMK:kdg:lae





GARRETT HEMANN ROBERTSON P.C.

Willamette Professional Center
1011 Commercial St. NE
Salem, Oregon 97301-1049
Ph: (503) 581-1501
Fax: (503) 581-5891
www.ghrlawyers.com

July 15, 2019

***Via First Class Mail and
Via Email: gfennimore@co.marion.or.us***

Joe Fennimore
5155 Silverton Rd NE
Salem, OR 97305

*Re: Our Client: Tofte Family LLC
Applications for Zone Change/Comprehensive Plan Amendment
and Property Line Adjustment
Our File No. 84902003
Case No. 18-007*

Dear Joe Fennimore:

Please find enclosed additional materials to supplement the record in Case No. 18-007 in the matter of applications for a zone change, comprehensive plan amendment, and property line adjustment. Please consider this letter a supplemental admission of evidence and materials and a follow up to the letter dated July 11, 2019.

To further assist the Board in making its determination with regard to vegetation retention requirements, we have enclosed a rendering of what applicant currently believes to be the usable area on the subject property with consideration given to topography and the proposed 20-foot setback. This enclosed depiction more specifically illustrates where development of Enchanted Forest Theme Park was approved in 1986 (identified as the Enchanted Forest Plot Plan in this document), and where expansion of the theme park may occur on the subject property to be rezoned rural Commercial. This area is labeled as the Proposed Expansion Area and is adjacent to the existing theme park. Note that there is no formally planned expansion of the theme park, including what is contained in this document, and Tofte may or may not choose to develop the depicted usable or unusable area.

As can also be seen by the enclosed images, Tofte has consistently maintained the aesthetic of a naturally wooded landscape and will continue to do so in any expansion of the theme park. The theme park is essentially unseen in the enclosed Google Maps aerial view of the property due to this effort to carefully maintain vegetation throughout the area. Tofte will take the same care to ensure that any expansion onto the depicted usable area of the subject property will look similar from an aerial view. All future development that may occur will also be respectful of the rural area, neighbors, and provide an economic benefit for the region.



Joe Fennimore
July 15, 2019
Page 2

This supplemental admission of evidence and materials for the record shall supplement and add to all materials previously submitted by the applicant for this Case No. 18-007.

Sincerely,



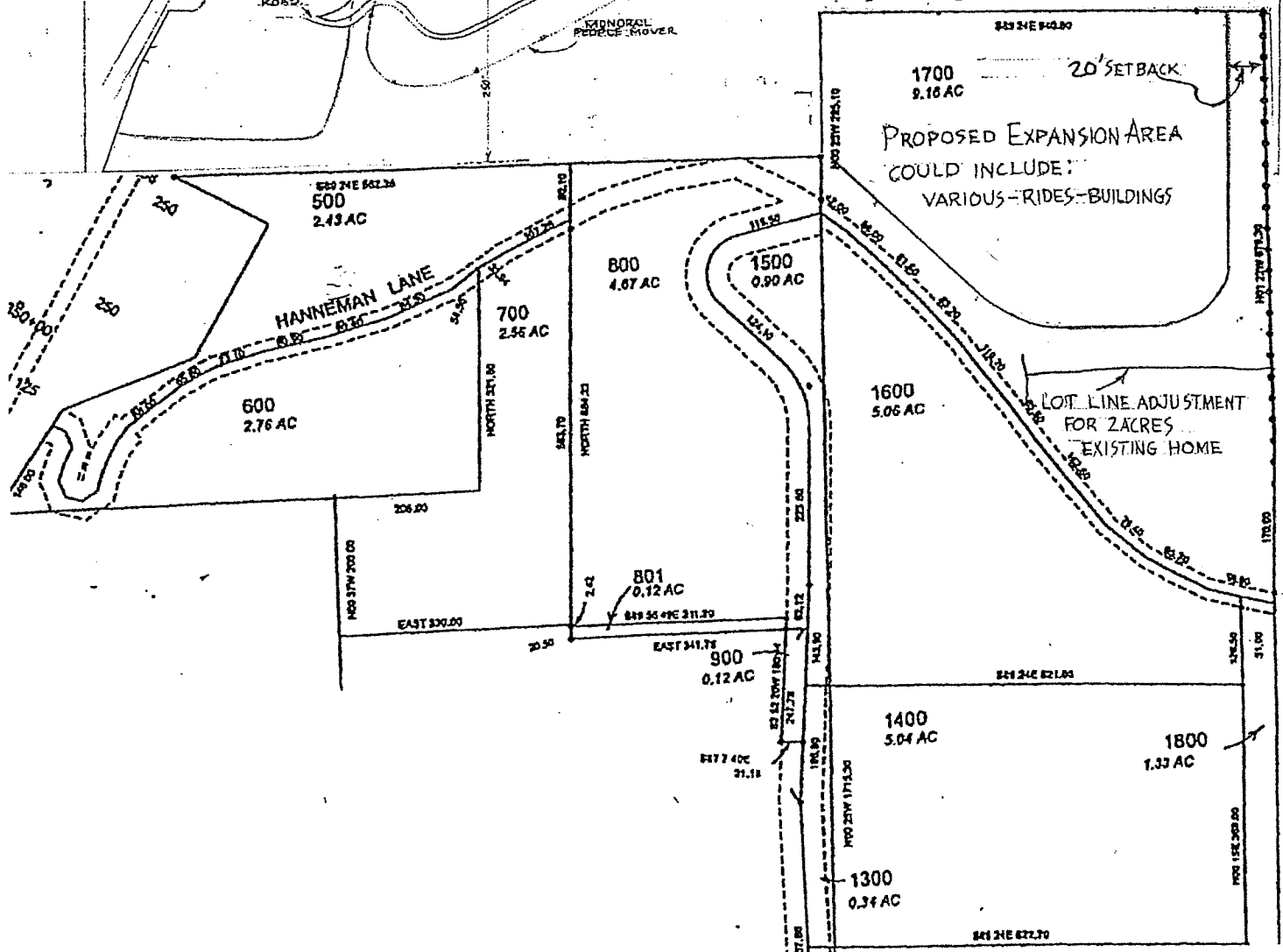
J. Michael Keane
mkeane@ghrlawyers.com

JMK:lae:lae

Enclosures

4846-3189-6476, v. 2





Google Maps not to scale
in this area

Enchanted Forest

Rodgers C

Proposed
C

Myers
home

Hanson
home

Hoffman
home

Lambert
home

existing
home

Willamette
Valley
Vineyards

Lambert
home

Meduri
home

Willamette
Valley
Vineyards
Google





