

**NOTICE OF DECISION  
PARTITION CASE NO. 17-022**

**APPLICATION:** Application of Larry and Janice Kuedell to divide a 6.03 acre parcel into two parcels of 3.03 acres and 3.0 acres each in an AR-3 (Acreage Residential 3-Acre Minimum) zone located at 8420 Silver Falls Highway SE, Aumsville (T8S; R2W; Section 14D; tax lot 200).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Partition application, subject to certain conditions.

**EXPIRATION DATE:** This approval is valid only when the final partition plat is recorded by **January 19, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

**WARNING:** A decision approving the proposed division is for land use purposes only. Due to septic, well, and drainfield replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

**Prior to recording the final plat:**

1. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition Case 17-019. Following plat approval, it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final mylar to the County Surveyor.

**Prior to issuance of building permits on the resulting parcels:**

3. The partition plat shall be recorded.
4. Prior to issuance of building permits, the applicant shall provide a static water level measurement for any new or existing wells intended as the water supply for the new lot on the enclosed form.
5. Prior to issuance of building permits, the applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.
6. The applicants shall sign and submit a Declaratory/Farm-Forest Statement to the Planning Division. This Statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
7. A special dwelling setback of 100 feet shall be maintained from the north side of Silver Falls Highway.

**ADDITIONAL CONDITIONS:** Once the approved use is established the following conditions must be continually satisfied:

8. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum three acres in size, prior to any right-of-way dedication.

9. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

**OTHER PERMITS, FEES, AND RESTRICTIONS:** This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

11. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
12. The applicant should contact the Aumsville Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
13. If a new dwelling is constructed and the local fire official determines that there is inadequate apparatus access or water supply, then one or more of the uniform alternate construction standards in Oregon Administrative Rule 918-480-0125 must be met as determined by the Marion County Building Official.

**APPEAL PROCEDURE:** The Marion Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **January 19, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 20, 2018** unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The subject properties are designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR-3 (Acreage Residential- 3 Acre Minimum). The primary intent of this designation and zone is to provide for rural residential development at a density sustainable with rural services. The property is also in the Sensitive Groundwater Overlay Zone.
2. The subject parcel is located on the south side of Silver Falls Highway approximately 335 feet west of the intersection with Shaw Square. The 6.03 acre parcel identified as tax lot 200 is undeveloped. The property was subject of Property Line Adjustment #PLA17-037 and is considered a legal parcel.
3. Adjacent properties to north, across Silver Falls Hwy, are zoned EFU (Exclusive Farm Use) and devoted to farm use. All other nearby properties are zone AR-3 and consist of lot development with single family dwellings.
4. The applicant proposes to divide a 6.03 acre parcel into two parcels containing a minimum of three acres each.
5. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Surveyor commented: "Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. A checking fee, and recording fee are required. A current or updated title report must be

submitted at the time of review. Title reports shall be no less than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports."

Marion County Tax Assessor provided information regarding taxes on the subject properties.

Oregon Department of Transportation commented that any proposal requesting new access to a state highway will require written permission from ODOT.

6. Chapter 17.181 of the Marion County Code (MCC) establishes criteria for partitioning property in a Sensitive Groundwater Overlay zone (SGO). In order to meet criteria in Chapter 17.181 MCC, the applicant submitted a "Hydrogeology Report" which indicates there is a sustainable long-term supply of groundwater for the proposed development. Peer review of the Hydrogeology Report was positive.

The County requires a Declaratory Statement be recorded with the property deed to notify the applicants and subsequent owners that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells. In addition, the applicant must meet the water level monitoring requirements in MCC 17.181.120. This includes a static water level measurement of all existing wells prior to recording the plat, and at least one static water level measurement prior to the issuance of a building permit in any new or existing wells intended as the water supply for the lot. This requirement is only for lots created by partitions recorded after January 1, 1998. This will be made a condition of approval.

7. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of three acres. The two proposed new parcels will be at least three acres each and are consistent with this standard. In addition, the resulting undeveloped parcels, if they can obtain septic approval, are of sufficient size and shape to meet the development standards in the AR zone.

8. MCC 17.128.050 establishes special siting standards for dwellings near resource zones:

- (a) *Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.*
- (b) *The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.*

Although the proposed partition is appropriate, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. Also, a special dwelling setback of 100 feet should be maintained from the north side of Silver Falls Highway to further minimize the potential for conflict with farm or timber uses. Any approval can be conditioned to meet this criterion.

9. Staff recognizes the final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum 3.0 acres prior to any required right-of-way dedication.
10. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: January 4, 2018

If you have any questions please contact Lisa Milliman at 503-588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.