

**NOTICE OF DECISION  
PARTITION CASE NO. 19-011**

**APPLICATION:** Application of Matthew and Sandy Bearden to divide a 5.68 acre parcel into two parcels containing 3.43 acres and 2.25 acres each in an AR (Acreage Residential) zone located at 12135 Summit Ln SE, Turner. (T9; R2W; Section 19A; tax lot 00600).

**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 **August 23, 2021**. 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 drain field 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 19-010. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
3. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
4. 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.
5. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:  
  
**Condition A** – Record a Road Maintenance Agreement (RMA) concurrently with the plat for maintenance of the shared access easement.
6. 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 of two acres in size, prior to any right-of-way dedication.

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

7. The partition plat shall be recorded.

8. The applicant shall provide a static water level measurement for any new wells intended as the water supply for the lot on the enclosed form.
9. The applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division (enclosed). This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
10. The applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement (enclosed) 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.
11. **A special dwelling setback of 100 feet** shall be maintained from the east and south property lines of the resulting 3.43 acre parcel identified as Parcel 2 on the site plan.

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

12. 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:

13. 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).
14. The applicant should contact the Turner 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.
16. The applicant should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements, listed in Finding #5 below, that may be required.

**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 **August 23, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 24, 2019** unless further consideration is requested.

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

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas. The property is also in the Sensitive Groundwater Overlay Zone (SGO), which is addressed below.

2. The subject parcel is located on the east side of Summit Lane SE approximately 700 feet south of Summit Loop SE. The parcel contains an existing dwelling, accessory structures, well and septic system. The subject parcel was subject of Major Partition MP/V79-64 which determined the parcel to be a legal lot for land use purposes.
3. Properties to the west and north are zoned AR (Acreage Residential) and developed with residential uses. Properties to the east and south are zoned SA (Special Agriculture) and developed with dwellings and accessory buildings.
4. The applicant proposes to divide the 5.68 acre parcel into two parcels containing 3.43 acres and 2.25 acres each.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included in the land use decision:

***Condition A** – Record a Road Maintenance Agreement (RMA) concurrently with the plat for maintenance of the shared access easement.*

Per Oregon Revised Statute (ORS), maintenance of private easements is the collective responsibility of adjoining property owners. Public Works needs to review, approve and sign the RMA prior to recordation. Please contact Public Works Engineering at (503) 584-7714 for details.

Please note that the following requirements:

- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.
- C. In accordance with Marion County Code 11.10, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards. Applicant is advised that evidence of a DSL/ACOE Permit or waiver for crossing McKinney Creek to access the rear of the lot is a prerequisite for issuance of an Access Permit. Please refer to the Engineering Advisory below for further discussion.
- D. Both a Marion County Work in Right-of-Way Permit and a Utility Permit are required in order to install utilities within County-controlled public right-of-ways.

Advisories:

- E. Per Marion County GIS records, the seasonal creek that crosses through the center of the property east-west as depicted on the Applicant’s site plan is a named and mapped drainageway, McKinney Creek. Any ground altering activities within “waters of the state” (typically those named and mapped), including development of a culvert crossing or bridge, requires a joint permit from the Department of State Lands (DSL) and the Army Corps. of Engineers (ACOE).”

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee and recording fees 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 On-Site Sewage commented that an existing system septic evaluation will be required for the developed parcel and a septic site evaluation for the undeveloped parcel.

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

Turner Fire District commented on access standards.

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 MCC 17.181, 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 two acres. The two proposed new parcels will be at least two 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. 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 2.0 acres prior to any required right-of-way dedication.
9. MCC 17.110.800. DWELLINGS AND ALL OTHER BUILDINGS TO BE ACCESSIBLE TO PUBLIC STREET. *Every dwelling shall be situated on a lot having direct access by abutting upon a public street or a pre-existing private driveway of a width not less than 20 feet. A private drive shall not serve more than four dwelling units unless the parcels, on which those units are proposed to be placed, were established with the approval of Marion County in accordance with state law and Marion County ordinances prior to May 1, 1977, or were approved under Chapter 17.121 MCC, Planned Development.*

The applicants are proposing to use an existing access easement to serve the new parcel. The subject parcel has 39.03 feet of frontage on the portion of Summit Lane SE that is a public road. There are three dwellings currently served by the private easement portion of Summit Lane SE that are located on parcels with no public road frontage. The proposed parcel would be the fourth dwelling served by Summit Lane SE. This criterion is met.

10. 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.*

The subject property is adjacent to parcels zoned SA (Special Agriculture) to the east and south. The site plan submitted with the application indicates that a dwelling can be placed on the new parcel at least 100 feet from the east and south property lines. Therefore, Marion County Planning Division will apply a special setback from the east and south property lines of proposed Parcel 2. 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. Any approval can be conditioned to meet this criterion.

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: August 8, 2019

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.