

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
PROPERTY LINE ADJUSTMENT CASE NO. 18-027**

APPLICATION: Application of Thomas Pilcher, the Thomas L. Picher Trust and the Phyllis J. Pilcher Trust to adjust the property lines on a 96.39 acre parcel and a 1.84 acre parcel to create an 80 acre parcel and a 17.84 acre parcel in an EFU (Exclusive Farm Use) zone located at 12492 Jefferson Highway, Jefferson (T9S; R3W; Section 23; tax lots 100 and 400).

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED** the above described request subject to certain conditions.

EXPIRATION DATE: Title transfer instruments accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **September 27, 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 request is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal 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:

1. **Property line adjustment deeds shall be recorded with the Marion County Clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **This property line adjustment is not complete until the title transfer instruments accomplishing the property adjustments are recorded by the applicants with the Marion County Clerk.**
2. The 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. All conditions of Conditional Use Case #18-042 shall continue to apply, except a non-farm dwelling shall maintain a 200 foot special setback from the west, south and east property lines of the resulting smaller parcel and an accessory building shall maintain a 100 foot special setback from the west, south and east property lines of the resulting smaller parcel.
4. Prior to obtaining building permits, the applicant must provide evidence to the Planning Director that the county Assessor's Office has permanently disqualified the lot or parcel upon which the non-farm dwelling is placed for valuation at true cash value for farm or forest use, and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359(1)(b), ORS 321.842(1)(A) and 321.716.

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

5. After the property line adjustment has been completed, 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 any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 be contacted to identify restrictions or necessary permits.

6. Prior to recording the deeds, all taxes due must be paid to the Marion County Tax Office (at 503-588-5215 for verification of payments).

APPEAL PROCEDURE: The Marion County 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 (Appeal Form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **September 27, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 28, 2018** unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The larger parcel is located on the east side of Jefferson Highway in the 12,400 block. The property contains a residence and accessory buildings. The property was described by a contract in 1959 and is, therefore, considered legally created for land use purposes.

The smaller parcel is located north of Wintercreek Road SE on the west side of Twin Creeks Lane SE in the 12,200 block. The property is developed with a well and septic system and was the subject of NFD80-7, which approved a non-farm dwelling that was never built. The property was again approved for a non-farm dwelling in Conditional Use Case 18-42. The property is considered to be legally created as a result of these land uses cases.

3. Surrounding properties to the south and east are in farm use in an EFU or SA (Special Agriculture) zone. Properties to the west and north are zoned AR (Acreage Residential) and developed with rural homesites.
4. Soil Conservation Service Soil Survey of Marion County indicates the properties are 30% high-value farmland soils.
5. The applicants propose to adjust the property lines on a 96.39 acre parcel and a 1.84 acre parcel to create an 80 acre parcel and a 17.84 acre parcel
6. Marion County Surveyors Office commented: "No survey required. The resultant properties are greater than ten acres. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)]"

Marion County Building Inspection Onsite Wastewater Specialist commented that a site evaluation or authorization is required for the smaller parcel. A record review is required for the larger parcel. Contact Marion County Building Inspection for more information at 503-588-5147.

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

7. The criteria for reviewing property line adjustments within an EFU zone are listed in Section 17.136.090(C) of the Marion County Code (MCC). These criteria are as follows:

- (a) *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.*
- (b) *If the minimum parcel size in MCC 17.136.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*
- (c) *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*
- (d) *A property line adjustment may not be used to:*
 - 1. *Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
 - 2. *Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*
 - 3. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*
- (e) *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:*
 - 1. *Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
 - 2. *Does not increase the potential number of dwellings on the resulting parcels.*

8. The applicant provided an analysis of the minimum parcel size based on parcels within 500 feet of the subject properties and determined it to be 80 acres. One of the existing parcels is greater than 80 acres in size prior to the adjustment and would remain greater than 80 acres in size after the adjustment; the criteria in #7(a) and (b) are met. The portion of land being adjusted and added to the small parcel appears to be almost entirely Steiwer and Chehulpum silt loam soil, a Class 6 soil, non-farm soil. Since the area being adjusted is developed with a woodlot with soil too rocky and steep to be farmed, the reconfiguration will not result in the removal of any land from agriculture production. The larger property would still continue to be able to be farmed. The criterion in #7(c) is met. The large parcel contains an existing dwelling and the smaller parcel was approved for a non-farm dwelling. The proposed property line adjustment does not seek to enlarge or reduce the parcels in order to qualify for the placement of another dwelling. The criteria in #7(d) and (e) are met.

9. MCC 17.172.120(E) requires that property line adjustment deeds 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.

10. In Conditional Use Case #18-042 special setbacks from surrounding property lines were applied when the non-farm dwelling was approved. Since the configuration of the parcel would change as a result of this property line adjustment, those special setbacks would no longer be consistent with which property lines about surrounding farm uses. Marion County Code 17.136.070 contains the following special setbacks:

- (a) *Special Setbacks:*
 - (1) *Dwellings. A special dwelling setback of 200 feet from any abutting parcel in farm use or timber production is required.*
 - (2) *Accessory buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.*

- (3) *Adjustments. The special setbacks in (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 17.110.680.*

These special setbacks can be applied to the non-farm dwelling previously approved on the property in consideration of the revised property lines as a result of this property line adjustment.

11. The 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.
12. Based on the above findings and conclusions, the proposal meets the criteria for a property line adjustment in an EFU zone and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: September 12, 2018

If you have any questions please contact Brandon Reich 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.