

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. 18-044**

APPLICATION: Application of Gerald Roth to adjust the property lines on a 108.6 acre parcel, a 7.6 acre parcel, a 116.96 acre parcel and a 15.75 acre parcel to create an 81 acre parcel, a 20 acre parcel, a 40 acre parcel and a 108 acre parcel in an EFU (Exclusive Farm Use) zone located at 3124 82nd Av NE, Salem. (T7S; R2W; Section 14; tax lots 200, 201 and 202 and Section 13; tax lot 1000).

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 **January 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 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. **A replat shall be recorded with the Marion County Clerk meeting requirements identified in ORS 92.185(6) and ORS 92.050.** The replat shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment Case 18-044. (Final Plat Instructions enclosed).
3. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office following the recording of the replat.
4. Deed recording reference numbers shall be noted on the required survey.
5. **Prior to submitting the replat,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
6. 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.

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

7. 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.

8. 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 **January 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 **January 24, 2019** 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 properties are located on the east side of 82nd Av NE and run south from Lardon Rd NE to Sunnyview Rd NE. A portion of the property extends west of 82nd Av NE along the south side of Lardon Rd NE. The property was created in its present configuration through approval of Partition Case 07-76. The 7.60 acre parcel, tax lot 200, contains a farm stand/pie processing facility, berry processing facility, agricultural buildings, well and septic system. The 108 acre parcel, tax lot 202, is in farm production and contains a manufactured home, accessory building, well and septic system located on the west side of 82nd Av NE. On the east side of 82nd Av NE the property contains a fire pond, new septic field (with easement) and new parking area. The 116.36 acre parcel, tax lot 201, is undeveloped and in farm production. The 15.75 acre parcel, tax lot 1000, is undeveloped and in farm production

The subject properties received approval for a property line adjustment, PLA14-027, however it was never completed due to unforeseen issues. The applicant has made some modifications which is resulting in this new proposed property line adjustment application.

The property received approval to operate a farm stand under Administrative Review Case 09-32, an Administrative Review Case 00-26 for a facility to process farm crops and Conditional Use Case 03-48, and to expand the facility under Conditional Use Case 05-63. The operation processes frozen berries grown on the subject farm and in the Willamette Valley. The property received approval for a partition, P07-76, to partition the berry and frozen fruit processing facility from the remainder of the property in farm use.

3. Surrounding properties in all directions are in farm use in an EFU zone.
4. Soil Conservation Service Soil Survey of Marion County indicates the properties are 100% high-value farmland soils.
5. The applicants propose to adjust property lines on a 7.60 acre parcel (tax lot 200), a 108 acre parcel (tax lot 202), a 116 acre parcel (tax lot 201) and a 15.75 acre parcel (tax lot 1000) to create an 81 acre parcel, a 20 acre parcel, a 40 acre parcel and a 108 acre parcel. The purpose is to reflect current farming practices on the parcels. The resulting 20

acre parcel would contain the existing pie processing/farm stand, berry processing buildings, parking areas and fire ponds along with the septic system.

6. Marion County Surveyor commented “A re-plat, in the form of a partition plat, is required. A property line adjustment deed shall be recorded with the Marion County Clerk’s Office, following recording of the re-plat. As 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 acknowledgement. Must comply with all provisions per ORS 92.185 (6). Must be surveyed and platted per ORS 92.050, and the plat submitted for review. Checking fee and recording fees required. A current or updated title report must be submitted at the time of review.”

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. According to MCC 17.136.090(A)(1) the minimum lot size for a parcel in an EFU zone is calculated as follows:

- (a) *All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*
- (b) *The average (mean) size of all parcels larger than 40 acres identified in paragraph (a) of this subsection shall be determined.*
- (c) *The acreage size calculated in paragraph (b) of this subsection, rounded to the nearest 10 acres, is the minimum parcel size, unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

In this instance, the average calculated parcel size is 68 acres (545 acres/8 parcels) therefore, the minimum parcel size for this proposal is 80 acres under provisions of #8 above.

9. Two of the parcels exceed 80 acres and two do not. Two parcels, after the adjustment would still exceed 80 acres and two would remain below the minimum. Therefore, the proposed adjustment meets the required minimum parcel sizes in #7(a) and (b). The reconfiguration will not result in the removal of any land from agriculture production. It appears that the proposal would result in more effective management of the parcels. The 116 acre parcel will contain the existing dwelling and the applicants are not reconfiguring the parcels for, or applying for, a dwelling. The criteria in #7(c), (d), and (e) are met.
10. Under MCC 17.172.120(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.
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: January 8, 2019

If you have any questions please contact Patty Dorr 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.