

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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/PARTITION CASE NO. 18-045**

**APPLICATION:** Application of Patrick and Sheryl Hoke and Thomas Wheeler to adjust the property lines on a 2.49 acre parcel and a 3.78 to create a 2.27 acre parcel and a 4.0 acre parcel, and then to divide the 4.00 acre parcel into two parcels of 2.00 acres each in an AR (Acreage Residential) zone located at 1025 Rainbow Valley Ln SE, Salem (T8S; R3W; Section 27A; tax lots 300 and 403).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-listed Property Line Adjustment application subject to certain conditions.

**EXPIRATION DATE:** This approval is valid only when the title transfer instruments and final partition plat are recorded by **January 23, 2021**. The effective period of an approved application may be extended for an additional year subject to approval of an extension (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 uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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 deeds and plat:**

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. **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 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 18-045. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
3. Property line adjustment deed recording reference numbers shall be noted on the required plat.
4. Prior to recording the deeds or 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.**
5. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
6. 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.
7. 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.

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

8. The deeds and partition plat shall be recorded.
9. Prior to issuance of building permits, 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.
10. 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.
11. 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.
12. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

**Condition A** – Prior to building permit issuance, submit a copy or copies of the recorded Road Maintenance Agreement(s) for Rainbow Valley Lane to Marion County Public Works Engineering. If none exist, prior to plat approval, provide a recordable a Road Maintenance Agreement for Rainbow Valley Lane.

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

13. After the property line adjustment and partition have 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 #5 below be contacted to identify restrictions or necessary permits.

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

**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 (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:** Findings and conclusions on which decision was based are noted below.

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). 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 properties are located on the east side of Rainbow Drive SE in the 7000 block. Both properties contain a dwelling, well and septic drainfield. The larger parcel was created as a result of Partition 04-30 and is a legally created parcel. The smaller parcel is a lot in Sunnyside Fruit Farms No 7, a legally platted subdivision.
3. Surrounding properties to the north, east and south are zoned AR and in rural residential use. Property to the west is zoned Special Agriculture and in farm use.
4. The applicants are proposing to adjust the property lines on a 2.49 acre parcel and a 3.78 to create a 2.27 acre parcel and a 4.0 acre parcel, and then to divide the 4.00 acre parcel into two parcels of 2.00 acres each. The newly created parcel would access off Rainbow Valley Lane. Although the request is for a property line adjustment followed by a partition, filing a single partition plat in the form of a replat of the existing parcels will accomplish the applicants' proposal.
5. Public Works Land Development and Engineering Permits commented:

Engineering Condition

“Public Works Engineering requests that the following Condition is included in the approval of the land use case:

*Condition A – Prior to building permit issuance, submit a copy or copies of the recorded Road Maintenance Agreement(s) for Rainbow Valley Lane to Marion County Public Works Engineering. If none exist, prior to plat approval, provide a recordable a Road Maintenance Agreement for Rainbow Valley Lane.*

MCPW Engineering has a RMA template available, and can prepare it at no-cost aside from county clerk recording fees.”

“Engineering Requirements

B. In accordance with MCC 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. The Applicant shall be required to apply for a driveway “Access Permit” and construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards.

C. Prior to issuance of building permits for construction on the buildable lot, the Applicant will be required to acquire an Erosion Prevention & Sediment Control Permit from MCPW Engineering. Please note that the subject property is situated within what has been designated as a high-risk zone for erosion within the Stormwater Management Area.

D. A mapped seasonal drainageway traverses the buildable portion of the subject property. 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.

E. 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.

F. Utility work in the public R/W requires permits from MCPW Engineering.”

Marion County Surveyors Office 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 more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

A re-plat (in the form of a partition plat) is required, due to the adjustment of a partition plat parcel line or subdivision lot line. A property line adjustment deed shall be recorded with the Marion County Clerk’s Office, prior to the recording of the re-plat. Deed recording reference numbers shall be noted on the 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 acknowledgment. The resultant property deeds shall be recorded after the recording of the re-plat.

Re-plat: (Re-configuration of lots or parcels and public easements within a recorded plat). 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 Assessor’s Office provided information regarding taxes on the subject properties.

Salem Suburban Fire commented that access and water supply requirements and other fire standards will be reviewed at the time of building permits.

6. There are no specific criteria for reviewing property line adjustments within an AR zone. Section 17.128.070 of the Marion County Code (MCC) requires a minimum lot size of two acres. Both parcels are currently meet the minimum lot size of 2 acres and would continue to do so after the property line adjustment. Structures will maintain adequate setbacks from setbacks from property lines with adequate access to a roadway. Subject to conditions, the property line adjustment complies with the standards of the AR zone.
7. Under MCC 17.172.120(E) property line adjustment deeds shall be recorded with the Marion County Clerk’s Office prior to submitting the plat. Deed recording reference numbers shall be noted on the required survey.
8. 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.
9. 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.
10. 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 parcel, if it can obtain septic approval, is of sufficient size and shape to meet the development standards in the AR zone.
11. 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.

12. 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.
13. MCC 17.110.800 permits a maximum of four parcels can be served off a private roadway, not counting a parcel which has 20 feet of frontage on a public road right-of-way (regardless of whether the parcel uses the public road for access). The applicants provided evidence that the newly created parcel would be the fourth parcel to be served by Rainbow Valley Lane. Future parcels could not be served by Rainbow Valley Lane unless a variance were approved to permit more than four parcels to be served by a private roadway.
14. Based on the above findings, the applicant's proposal meets the criteria for a property line adjustment and partition in an AR zone and is, therefore, **APPROVED** subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: January 8, 2019

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.