

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 MODIFIED DECISION
PROPERTY LINE ADJUSTMENT CASE NO. 18-046**

APPLICATION: Application of Norman and Debra Wiesner and Thomas Bahde to adjust the property lines on a 2.07 acre parcel and a 5.96 acre parcel to create a 2.11 acre parcel and a 5.92 acre parcel in an AR (Acreage Residential) and EFU (Exclusive Farm Use) zone located at 16484 South Abiqua Road NE, and 6625 Davis Creek Road NE, Silverton (T6S; R1E; Section 30A; tax lots 2000, 2100, 2300 and 2400).

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED A MODIFIED** property line adjustment to a 2.787 acre parcel and a 5.96 acre parcel to create a 2.827 acre parcel and a 5.92 acre parcel 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 **February 15, 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. Deed recording reference numbers shall be noted on the required survey.
3. The applicants shall have both parcels surveyed per ORS 92.060 (7). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment Case 18-046. (Final Plat Instructions enclosed).
4. **Prior to recording the deeds or filing the plat,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
5. 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:

6. 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.

7. 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).
8. The applicants should contact Marion County Land Development and Engineering at (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 (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 **February 15, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 16, 2019** unless further consideration is requested.

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

1. One of the subject properties is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use) and the other is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The intent of the agricultural designation and zone is to promote and protect commercial agricultural operations and the intent of the rural residential designation and zone is to provide allow creation of acreage home sites at a density that maintains the character and environmental quality of rural residential areas.
2. The parcels are located on the west side of Davis Creek Rd NE and the south side of South Abiqua Rd NE. Both parcels are developed with an existing dwelling, well and septic system. The smaller AR zoned parcel was the subject of Property Line Adjustment #PLA13-004 which combined tax lots 2000, 2100, and 2300 into a single parcel that is 2.787 acres in size and considered a legal lot for land use purposes. The larger property was created in its current configuration by deed recorded prior to September of 1977.
3. Surrounding uses in all directions consist of properties in farm use in an EFU zone.
4. Soil Conservation Service Soil Survey of Marion County indicates the properties are predominately composed of high-value farm land soils.
5. The applicants proposed to adjust the property lines on a 2.07 acre parcel and a 5.96 acre to parcel to create a 2.11 acre parcel and a 5.92 acre parcel. This proposal has been modified to reflect the size and configuration of the smaller parcel resulting from PLA #13-004 and the deed recorded on Reel 3487; Page 21 of the Marion County Clerk's records. As a result, the proposal has been modified to adjust the property lines on a 2.787 acre parcel and a 5.96 acre to parcel to create a 2.827 acre parcel and a 5.92 acre parcel.
6. Marion County Surveyors Office commented: "Both parcels must be surveyed per ORS 92.060(7) and the surveys submitted for review. A survey checking fee must be paid at the time of review. Property line adjustment deed shall be recorded with the county clerk. Marion County Planning requires perimeter descriptions of the resultant properties. 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."

Marion County Public Works Land Development and Engineering commented:

“A. Applicants are advised that the accesses to the subject properties do not meet Marion County Code (MCC) 11.10 for sight distance, spacing, and safety standards. The following numbered sub-requirements apply:

- 1) At such time that development is proposed on either subject property, the access to that lot proposing development may be required to be relocated or modified to meet MCC 11.10.
- 2) If the land use action is approved, the Applicant shall trim the fir tree located on Parcel A south of the access such that it does not impede intersection sight distance at the intersection of Davis Creek Road and South Abiqua Road and submit photographic evidence of trimming within 90 calendar days from the date of the *Notice of Decision* to mhepburn@co.marion.or.us, or mail physical photos to our office with Attn: Max Hepburn.”

7. Since the area being adjusted is located in an EFU zone, the criteria for a property line adjustment in the EFU zone will be reviewed. 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 existing parcels are less than 80 acres in size prior to the adjustment; the criteria in #7(a) and (b) are met. The reconfiguration will not result in the removal of any land from agriculture production. The applicants are proposing to adjust property lines so that the existing fence will lie along the common property line. Both parcels are in agricultural use consistent with the proposed configuration. It appears that the proposal would result in effective farm management of the parcels for the property owners. The criteria in #7(c), (d), and (e) are met.

9. 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.

10. 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.
11. Based on the above findings and conclusions, the proposal meets the criteria for a property line adjustment in an EFU and AR zone and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: February 1, 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.