

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 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. 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. 19-006**

**APPLICATION:** Application of Matthew Stewart to adjust the property lines on a 0.69 acre parcel and a 3.66 acre parcel to create a 2 acre parcel and a 2.35 acre parcel in an AR-2 (Acreage Residential – 2 Acre Minimum) zone located at 2767 Kuebler Road SE, Salem (T8S; R3W; Section 08C; tax lots 4100, 4200, 4300 and 4400).

**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 **March 28, 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 survey shall be recorded. 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 19-006. (Final Plat Instructions enclosed). Deed recording reference numbers shall be noted on the required survey.
3. Public Works Engineering requests that the following conditions are required for approval of this land use case:

***Condition A – Prior to issuance of building permits for either of the resulting parcels, acquire an Access Permit, and under the Permit, close the existing access approach and re-establish an access approach centered on a recorded shared access easement. Or:***

***Alternative Condition A – Prior to issuance of building permits for either of the resulting parcels, record a shared access easement centered on the existing access approach.***

***Condition B – Prior to PLA survey approval, dedicate sufficient right-of-way along the Kuebler Road frontage to achieve a 30-foot right-of-way half-width.***

***Condition C – Prior to PLA survey approval, remove the large boulders within the Kuebler Road right-of-way.***

***Condition D – Prior to PLA survey approval, record a Removal Agreement with Marion County for any portion of the, what appears to be, concrete wall that may be located within the 30-foot Special Setback of Kuebler Road,***

*to be determined by PW Engineering. Per Marion County Code 17.112.020, ancillary structures within the Special Setback are subject to potential removal. If the wall is not within the Special Setback, this Condition will be deemed moot. An Application for a Removal Agreement can be obtained from Marion County Public Works Engineering.*

- Names for the proposed private access easement have been submitted to Marion County Planning Division for review, in coordination with the 9-1-1 Emergency System. The approved name must be shown on the final partition plat, and a work order for the street sign installation, with appropriate fee, must be submitted to Marion County Public Works **prior to the plat being recorded.**
- The two 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:

- 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 #5 be contacted to identify restrictions or necessary permits.

- 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).
- 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 (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 **March 28, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 29, 2019** unless further consideration is requested.

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

- 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 parcels are located on the north side of Kuebler Road South approximately 1,030 feet east of the intersection with Viewcrest Road South. Tax lots 4100, 4200 and 4400 contain an existing dwelling, garage, shop building, driveway, well and septic drain field. Tax lot 4300 is undeveloped, but encumbered with electric and gas lines serving the existing dwelling on tax lot 4200. The remainder of the property is undeveloped. Tax lots 4100, 4200 and 4400 have been described as one lot on a deed (Volume 0739, Page 0076) since at least October 29, 1972.

Tax Lot 4300 was created by omission as a result of that deed when it was recorded. These properties are considered legal created for land use purposes.

3. Surrounding properties to the east are within the City of Salem. Properties to the north, west and south are zoned AR and developed with rural homesites.
4. The applicants propose to adjust the property lines on a 0.69 acre parcel and a 3.66 acre parcel to create a 2 acre parcel and a 2.35 acre parcel. Once the property lines are adjusted, the southern property may be developed with a dwelling.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use decision:

***“Condition A – Prior to issuance of building permits for either of the resulting parcels, acquire an Access Permit, and under the Permit, close the existing access approach and re-establish an access approach centered on a recorded shared access easement. Or:***

***Alternative Condition A – Prior to issuance of building permits for either of the resulting parcels, record a shared access easement centered on the existing access approach.***

Nexus for the above Condition is to promote future compliance with Marion County Code 17.172.560 whereby the roadway access shall conform to Marion County Standards for an access easement connection. See also Engineering Requirements associated with Alternative Condition A that require access modification.

***Condition B – Prior to PLA survey approval, dedicate sufficient right-of-way along the Kuebler Road frontage to achieve a 30-foot right-of-way half-width.***

Nexus for the above Condition is the intensification of use of the access from the proposed development. Coordinate with Marion County Public Works Engineering to file the dedication deed. It is recommended that the surveyor develop a sketch and legal description for the dedication. It is noted that the minimum lot size is required to be met prior to right-of-way dedication, not after.

***Condition C – Prior to PLA survey approval, remove the large boulders within the Kuebler Road right-of-way.***

The above Condition is in accordance with Marion County Code 11.45. Boulders in proximity to the public traveled way are considered a fixed object hazard.

***Condition D – Prior to PLA survey approval, record a Removal Agreement with Marion County for any portion of the, what appears to be, concrete wall that may be located within the 30-foot Special Setback of Kuebler Road, to be determined by PW Engineering. Per Marion County Code 17.112.020, ancillary structures within the Special Setback are subject to potential removal. If the wall is not within the Special Setback, this Condition will be deemed moot. An Application for a Removal Agreement can be obtained from Marion County Public Works Engineering.”***

LDEP also requested that the following Requirements be included in the decision:

- “E. Prior to building permit issuance, Applicant will need to obtain an Erosion Prevention and Sediment Control (EPSC) Permit from MCPW as the subject property is within the high-risk erosion area within the Stormwater Management Area as designated by DEQ in Marion County’s MS4 permit.
- F. Accesses must meet sight distance, design, spacing, and safety standards in accordance with Marion County Code 11.10. The following numbered sub-requirements pertain to access:
  1. It appears the access was paved several years ago without a permit as no record of an Access Permit for the subject property has been located. Applicant shall apply for and obtain an Access Permit due to work previously conducted without a permit. The need for widening the paved

approach to be shared is anticipated. If any additional work is needed to improve the access to meet Marion County Standards they will be outlined in the permit.

2. During an initial inspection it was noted that there may be vegetation trimming required to obtain adequate sight distance. This will also be addressed by the Access Permit previously mentioned.
3. Construct the access to Kuebler Road in accordance with Marion County Standards. This may include widening the access and will also be addressed by the Access Permit previously mentioned.
4. Due to access spacing criteria for a Minor Collector, access to the two lots must be shared. Therefore, no new (second) access to Kuebler Road will be allowed.

G. 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.”

LDEP requested the following Advisories be included:

- “H. Per the Marion County Rural Transportation System Plan, this section of Kuebler Road is classified as a Minor Collector. Per Marion County Code 17.112.020 a Special Setback of 30 feet measured from the centerline of the street right-of-way applies on Minor Collectors, and from which standard zoning setbacks are measured. Please note county records indicate that the current right-of-way half-width is less than 30 feet.
- I. Utility Permits and Work in the Right-of-Way Permits will be required for any utility work to be conducted in the public right-of-way.
- J. Applicant should contact the local fire district to determine the applicable fire access requirements; including confirmation that the gate and columns are wide enough for Emergency service vehicles to pass through.”

Marion County Surveyors Office commented: “The property must be surveyed per ORS 92.060 (7) and the survey submitted for review. The survey checking fee is required at the time of review. Property line adjustment deeds shall be recorded with the Marion County Clerk’s Office prior to submitting the property line adjustment survey. Deed recording reference numbers shall be noted on the survey map. 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 Planning requires perimeter descriptions of the resultant properties.”

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

Salem Fire Department commented on access and water supply requirements.

Marion County Onsite Waste Water Specialist commented that a site evaluation is required for the 2 acre parcel and an existing system is required for the 2.35 acre parcel.

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. The existing 3.66 acre parcel is above the minimum lot size and would remain above 2 acres after the adjustment. The existing 0.69 acre parcel is below the minimum lot size, but would become larger and more conforming after the adjustment. Structures appear to be able to maintain adequate setbacks from property lines and would have 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 property line adjustment survey, if a survey is required. Deed recording reference numbers shall be noted on the required survey.

8. MCC 17.172.560 ACCESS STANDARDS *All lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.*
- (a) *Have a minimum easement width of 20 feet;*
  - (b) *Have a maximum grade of 12%;*
  - (c) *Be improved with an all-weather surface with a minimum width of 12 feet;*
  - (d) *Provide adequate sight-distance at intersections with public roadways;*
  - (e) *Be provided with a road name sign at the public roadway as an identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.*

The applicants are proposing an access easement to serve the new parcels. The requirements in Chapter 172.56 can be made a condition of any approval. It should be noted that the easement must also meet local Fire District Standards. Under the provisions in the Marion County Address and Street Name Ordinance, the easement must be named and all properties accessing the easement must be addressed from the roadway. A list of names was submitted to the 911 Dispatch Center for review. The approved name must be shown on the plat and prior to the recording of the plat, a work order for the street sign installation, with appropriate fee, must be submitted to Marion County Department of Public Works.

9. 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.
10. 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: March 13, 2019

If you have any questions please contact Seth Thompson 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.