

**NOTICE OF DECISION  
PROPERTY LINE ADJUSTMENT CASE NO. 19-014**

**APPLICATION:** Application of Eugene L. and Barbara J. Ferschweiler to adjust the property lines on a 2.06 acre parcel and a 9.86 acre parcel to create a 1.62 acre parcel and a 10.30 acre parcel in an EFU (Exclusive Farm Use) zone located at 3171 Matheny Road NE, Gervais (T5S; R3W; Section 36A; tax lots 600 and 700).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-listed Property Line Adjustment application 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 **June 19, 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:

1. **Property line adjustment deeds shall be recorded with the 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 is recorded by the applicants with the Marion County Clerk.**
2. The applicants shall have the resulting 1.62 acre parcel surveyed per ORS 92.060 (7). The survey shall be filed with the Marion County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment Case 19-014. (Final Plat Instructions enclosed).
3. **Prior to recording the deeds,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
4. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
5. Deed recording reference numbers shall be noted on the required survey.

**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 below be contacted to identify restrictions or necessary permits.

7. Prior to recording the deed all taxes due must be paid to the Marion County Assessor Tax Section (contact them at (503) 588-5215 for verification of payments).
8. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for Engineering Requirements, listed in Finding #6 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 **June 19, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 20, 2019** unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which 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 primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The properties are located on the north side of Matheny Road NE approximately 5,000 feet west of its intersection with River Road NE. The 2.06 acre parcel identified as tax lot 600 contains an existing dwelling, accessory structures, well and septic system. The 9.86 acre parcel identified as tax lot 700 is undeveloped. Tax lot 600 was described by deed (Reel 256, Page 271) recorded on March 10, 1941, and is therefore considered a legal parcel for land use purposes. Tax lot 700 was described by deed (Reel 347, Page 305) recorded on May 27, 1946, and is therefore considered a legal parcel for land use purposes.
3. Surrounding properties in all directions are zoned EFU with existing dwellings and farm structures.
4. Soil Survey for Marion County, Oregon, indicates 99.7% of the soils on the subject properties are high value.
5. The applicants are proposing to adjust the property lines on a 2.06 acre parcel and a 9.86 acre parcel to create a 1.62 acre parcel and a 10.30 acre parcel.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following Requirement be included in the land use case:

“A. If access to the field, Property B as depicted on the land use Application site, is desired from Matheny Road; Applicant shall apply for and obtain an Access Permit to construct an access in accordance with Marion County Standards. In accordance with Marion County Code 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. Driveways must meet sight distance, design, spacing, and safety standards.”

Marion County Surveyors Office commented: “No survey required on the 10.30 acre parcel. The resultant property is greater than ten acres. The 1.62 acre parcel must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee 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 Onsite Waste Water Specialist commented that an existing system evaluation is required for the 1.62 acre parcel and a record review is required for the 10.30 acre parcel.

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

7. The criteria for reviewing lot line adjustments within an EFU zone are listed in Chapter 17.136.090(C) 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; therefore the criteria in #7 (a) and (b) do not apply. The applicants are proposing to adjust property lines so that the land being farmed can be separate from the land developed with a dwelling. The reconfiguration will not result in removal of land from agriculture production. The proposed property line adjustment does not seek to enlarge or reduce either parcel in order to qualify for the placement of a dwelling, where the parcel could not qualify for a dwelling before. The criteria in #7(c), (d), and (e) are met.
9. MCC 17.172.120(E) requires property line adjustment deeds to be recorded with the Marion County Clerk. Each resulting property shall be described by a perimeter description on the recorded deed. This can be made a condition of any approval.
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, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Joe Fennimore  
Director-Planning Division

Date: June 4, 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.