



# ***Marion County*** **OREGON**

## **PUBLIC WORKS**

(503) 588-5036

### **MEMORANDUM**

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#### **PARKS**

#### **PLANNING**

#### **SURVEY**

**TO:** Marion County Hearings Officer

**FROM:** Marion County Planning Division/Lisa Milliman

**SUBJECT:** Comprehensive Plan/Zone Change/Property Line Adjustment 18-007/  
Tofte

**DATE:** January 23, 2019

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

#### **FACTS:**

1. Application of Tofte Family LLC to change the zone from AR (Acreage Residential) to C (Commercial) and to change the Comprehensive Plan designation from Rural Residential to Commercial on a 9.15 acre parcel, and to adjust the property lines on a 19.86 acre parcel and a 9.15 acre parcel to create a 27.01 acre parcel and a 2.00 acre parcel in an AR zone located at 2675 Hanneman Ln SE, Turner. (T8S; R3W; Section 36C; tax lots 200 and 1700). Approximately 7.15 acres of tax lot 1700 now zoned AR is proposed to be reconfigured to be a part of tax lot 200 which is zoned C and is developed with the Enchanted Forest Theme Park. The remaining 2.00 acres of tax lot 1700, located at the south end of the parcel would remain in AR zoning and be available for residential development.
2. The property is located on the north side of Hanneman Lane SE approximately 1,500 east of the intersection with Enchanted Way SE. The property is a legal parcel for land use purposes.
3. Surrounding properties to the northeast, north, and northwest are zoned CR and developed with Enchanted Forest. Property in all other directions is zoned SA (Special Agriculture) and in farm or forest use.
4. Marion County Public Works Land Development and Engineering Permits (MCPW) provided the following comments:

#### **ENGINEERING REQUIREMENTS**

“A. The private access easement, Hanneman Lane, is served from Enchanted Way, which is under ODOT jurisdiction. Prior to issuance of building permits, the Applicant will need to provide evidence to MCPW Engineering of meeting ODOT access requirements, if any.

B. The subject property is within the unincorporated area of Marion County and will assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R.

C. The County requires any development having 0.5-acre or more of impervious (hard) surface to provide storm water detention. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved by Public Works prior to issuance of a certificate of occupancy.

#### ENGINEERING ADVISORIES

Applicant should also be aware of the following:

D. According to Marion County records, there exists a 30-foot wide road easement, centered on the property boundary between tax lot 083W36C01700 and 083W36C01600 to serve as access for the otherwise landlocked parcel, tax lot 083W3600600. Access to this parcel should not be restricted.

E. If total ground disturbing activities are equal to or greater than 1 acre, a DEQ 1200-C Construction Stormwater permit will likely be required by Oregon DEQ. Please contact DEQ for determination. Proof of coverage under a permit may be required by Marion County prior to building permit issuance.

F. 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.”

At the time of this staff report all other contacted agencies contacted either failed to respond or stated no objection to the proposal.

#### **STAFF FINDINGS AND ANALYSIS:**

5. In land use actions of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized. The findings presented below that address the proposed zone change and comprehensive plan amendment consider the portion of the property proposed to be consolidated with tax lot 200 and the Enchanted Forest Theme Park. The property line adjustment criteria will be addressed first, followed by the zone change and comprehensive plan criteria.

#### **PROPERTY LINE ADJUSTMENT**

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. Tax lot 1700 currently meets the minimum lot size of 2 acres and the proposed adjustment from 9.15 acres to 2.00 acres are would result in a lot size that continues to meet the minimum lot size requirement 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.

### **STATEWIDE PLANNING GOALS**

9. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals:
- **Goal 1: Citizen Involvement.** The notice and hearings process provides an opportunity for citizen involvement.
  - **Goal 2: Land use Planning.** The subject application to amend the Comprehensive Plan is considered under the regulations for this goal.
  - **Goal 3: Agricultural Lands.** The subject property has not been determined to be agricultural land. This goal does not apply.
  - **Goal 4: Forest Lands.** The subject property has not been determined to be forest land. This goal does not apply.
  - **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources.** The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property other than three small wetland areas that will not be disturbed when the property is developed.
  - **Goal 6: Air, Water and Land Resources Quality.** The subject property is not within an identified air quality area. The property is located in the Sensitive Groundwater Overlay Zone. No activities have been proposed on the property that would use significant amounts of groundwater. Any single commercial use of water using less than 5,000 gallons per day is exempt from water right permitting requirements of the Oregon Department of Water Resources, as long as the water is used for a “beneficial purpose without waste” and may be subject to regulation in times of water shortage.
  - **Goal 7: Areas Subject to Natural Disasters and Hazards.** The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
  - **Goal 8: Recreation Needs.** No Goal 8 resources are identified on the property. The proposal does seek to expand an existing developed recreational business that would further State planning goals and policies to provide recreational resources to the public.
  - **Goal 9: Economic Development.** Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal.
  - **Goal 10: Housing.** This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
  - **Goal 11: Public Facilities and Services.** The subject parcels can be served by the usual rural facilities such as a roadway, telephone and electrical service, and septic system. The purpose of the project is to generate electricity using renewable solar energy and will augment existing energy resources. This goal is met.
  - **Goal 12: Transportation.** Were the rezone granted to Commercial and the property developed with recreational facilities, the applicant did not indicate that the use would require additional transportation infrastructure. If future development includes additional parking and new access from public roads, Marion County Public Works and/or Oregon Department of Transportation, would require access permits and possibly traffic impact analysis to determine the need for additional road improvements prior to issuance of building permits.
  - **Goal 13: Energy Conservation.** The goal of this project is to generate energy using a renewable energy source. This goal is met.
  - **Goal 14: Urbanization.** The applicant is proposing to rezone rural residential land to Commercial to expand an existing theme park. The proposed use will not require urban services or affect rural population growth or employment. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.

## **COMPREHENSIVE PLAN AMENDMENT**

10. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.
11. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of one tax lot being developed as a single unit expansion of an existing adjacent use and the proposal can therefore be considered under the quasi-judicial amendment process.
12. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The goals and policies that apply in this case are located in the Rural Development Chapter and include policies for areas designated Commercial:
  - A. *“Strip-type” commercial or residential development along roads in rural areas shall be discouraged.*
  - B. *Rural industrial, commercial, and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.*
13. No strip-type development is proposed. The parcel is proposed to be developed as an expansion of the existing Enchanted Forest Theme Park and would not be expected to have any additional impact on surrounding agricultural and rural residential lands. The applicant did not show any proposed development on the site plan nor describe how the property would be developed as an expansion of the Enchanted Forest Theme Park, however it would be likely that all public access to the property would be controlled and limited to the existing entrance and parking area. Hanneman Lane SE is a private easement. There may be restrictions associated with the easement agreement regarding non-residential use of this road that the applicant should review if any access is proposed for the commercial development of the subject parcel. Use of Hanneman Lane SE has not been described in the applicant’s statement and is not considered to be a part of the proposal. Therefore, no additional traffic would be expected to use Hanneman Lane SE except for access to the 2.00 acre AR zoned remainder of tax lot 11700, which would not be expected to impact rural residential and agricultural uses of adjacent properties.
14. The subject property is part of a “committed/developed” and “needs exception” to Goal 3 taken as part of the county’s original acknowledgement. Because the original exception was taken for rural residential use, this newly proposed commercial use would require a new exception to Goal 3. An exception to Goal 14 will not be taken because the applicant is proposing to apply the county’s Commercial zone, which has been acknowledged as being in compliance with Goal 14.
15. OAR 660-004-0018 (2) requires that “physically developed” and “irrevocably committed” exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
  - A. *That are the same as the existing land uses on the exception site;*
  - B. *That meet the following requirements:*
    - i. *The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and*

- ii. *The rural uses, density, and public facilities and services will not commit adjacent or nearby resource uses to nonresource use as defined in OAR 660-004-0028; and*
- iii. *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;*
- C. *For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, 'Planning and Zoning of Unincorporated Communities', if applicable, or*
- D. *That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.*

16. The subject property is not developed. It is not within an unincorporated community and is not in industrial use. Marion County has adopted a rural commercial zone which has been acknowledged as complying with Goal 14, Urbanization. The zone ensures that rural uses will not exceed density limitations on rural land and will not commit rural uses to requiring an urban level of public facilities. The commercial uses which would be allowed under the county's Commercial zone would be able to be supported on solely a rural level of public services, including rural septic service, and would be similar to the types of uses found in the surrounding land to the north, which is zoned Commercial. While there are parcels in the area that are zone Special Agriculture, because of the slope of the land in the immediate area, most in the immediate vicinity are in timber and are not being farmed. The property cannot be farmed in conjunction with any other parcels in the area. No urban public services will be needed to serve the site. The parcels in the area already consist of properties in commercial or residential use. Based on the evidence and findings provided by the applicant and summarized here, the proposal appears to meet the criteria for a goal exception outlined in Finding 15.

17. OAR 660-004-028 specifies that a local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make the uses allowed by the applicable goal impracticable. It further stipulates that whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent. The findings for a committed exception therefore, must address the following:

- A. *The characteristics of the exception area;*
- B. *The characteristics of the adjacent area and the lands adjacent to it; and*
- C. *The relationship between the exception area and the lands adjacent to it; and*
- D. *The other relevant factors set forth in OAR 660-04-028(6).*

OAR 660-004-028(6) referenced above indicates that findings of fact for a committed exception shall address the following factors:

- A. *Existing adjacent uses;*
- B. *Existing public facilities and services (water and sewer lines, etc);*
- C. *Parcel size and ownership patterns of the exception area and adjacent lands:*
  - (i) *Consideration of parcel size and ownership patterns shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground utilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for non-farm dwellings or an intensive commercial*

*agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.*

- (ii) *Existing parcel sizes and contiguous ownership shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.*

- D. *Neighborhood and regional characteristics;*
- E. *Natural or manmade features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*
- F. *Physical Development according to OAR 660-004-025; and*
- G. *Other relevant factors.*

18. The applicant argues that the exception area is characterized by timbered land that has never been farmed. No immediately adjacent parcels are in farm production. Willamette Valley Vineyard is located south and west of the subject property and uses Enchanted Way for access. The property is bordered on the north by the existing Enchanted Forest Theme Park.
19. The requirements for zone changes are found in MCC (Marion County Code) 17.123.060 and include:
- A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
  - B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
  - C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
  - D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
  - E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*
20. The Commercial zone is the only zone that implements the rural Commercial designation in the Marion County Comprehensive Plan (MCCP). The MCCP policies that address designating property as Commercial were addressed earlier and the proposal is in compliance based on the evidence presented in the goal exception section of this report. The proposal is consistent with surrounding uses that comprise commercial, residential, and quasi-public uses on surrounding lands. The private access easement, Hanneman Lane, is served from Enchanted Way, which is under Oregon Department of Transportation (ODOT) jurisdiction. Prior to development, ODOT access requirements, if any, will be required before any access from Hanneman Lane is granted. The applicant did not provide information on how the proposed parcel would be developed or if access to the parcel is proposed from Hanneman Lane or through the existing theme park. There is no other property adjacent to the Enchanted Forest Theme Park property that is already zoned Commercial that is available for a potential expansion of the theme park. Based on the information submitted by the applicant, it appears the criteria for a zone change are satisfied by the proposal.

## **CONCLUSIONS**

21. Based on the above discussion, staff recommends the application for a Comprehensive Plan designation from Rural Residential to Commercial and a zone change zone from AR to C be approved. Further, based on the above discussion, staff recommends the property line adjustment to combine the area proposed for the zone change and Comprehensive Plan amendment with the adjacent parcel on which the existing theme park is located be approved.
22. If applicant's request is recommended for approval, Planning recommends the following conditions be applied:
  - A. 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.
  - B. 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.
  - C. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
  - D. Development of the property shall not obstruct access to Hanneman Lane SE from properties to the east of the subject parcel.
  - E. The applicant shall meet any ODOT requirements there may be for permits, access, right-of-way, traffic analysis, mitigation, frontage improvements, etc.