



Marion County OREGON

PUBLIC WORKS

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MEMORANDUM

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SURVEY

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Brandon Reich
SUBJECT: Comprehensive Plan/Zone Change/Partition 19-003/Alagoz
DATE: March 27, 2019

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

FACTS:

1. Patrick and Taisia Alagoz request to change the zone from AR-10 (Acreage Residential - 10 Acre Minimum) to AR-2 (Acreage Residential - 2 Acre Minimum) with an exception to Goal 14 (Urbanization) on a 5 acre parcel, and then a partition to divide the 5 acre parcel into two parcels containing 2 acres and 3 acres each located at 16157 Abiqua Road NE, Silverton (T6S; R1E; Section 19D; tax lot 900). The property is within the Sensitive Groundwater Overlay zone.
2. The property is located on the north side of Abiqua Road in the 16,100 block. The property contains a dwelling. The property and the parcel immediately to the west were subject to a previous land use action when the comprehensive plan was changed from Primary Agriculture to Rural Residential and the zoning from Exclusive Farm Use (EFU) to Acreage Residential - 10 Acre Minimum (AR-10) in ZC/CP Case 04-9. The property is a legal parcel for land use purposes.
3. Surrounding properties to the north, west and south are zoned EFU. Property to the east is zoned AR-10. Land further to the east is zoned AR with a two acre minimum lot size.
4. Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use case:

“Condition A –On the plat, depict reciprocal access easements such that both parcels share a single access to Abiqua Road.

In accordance with Marion County Rural Transportation System Plan (MCRTSP) Section 10.3.5, Policy #10b, properties that are subdivided or partitioned should share a common access. The shared access is presumed to be the existing access.

Condition B – *Prior to plat approval, obtain an Access Permit, and under the Permit, pave the shared driveway approach in hot mix asphalt, and, conduct limited roadside vegetation trimming in support of adequate Intersection Sight Distance.*

Access work is typically an Engineering Requirement; however, it is being elevated to condition status as a matter of timing for completion.”

LDEP requested that the following requirements be included:

“C. In accordance with Marion County Code 11.10, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards.

D. 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 indicated the applicant should also be aware of the following:

“E. 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.”

Marion County Tax Assessor commented on taxes related to the subject property.

Marion County Onsite Wastewater Specialist commented: “Site evaluation required for new parcel. Existing system evaluation required for existing septic system.”

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.
6. In 2000, the Department of Land Conservation and Development (DLCD) made rules in response to a 1986 Oregon Supreme Court Decision, *Curry County*, regarding which rural residential land is considered to be rural. DLCD determined that, in order to maintain the rural residential land as rural, and not urban, after October 4, 2000, zoning regulations applying to rural residential land existing at that time had to require a minimum parcel size of two acres, OAR 660-004-0040(8)(c) and (d). Zoning applied to land redesigned rural residential after October 4, 2000 had to require a minimum parcel size of ten acres in order to maintain the land as rural and not urban or take an exception to Goal 14, OAR 660-004-0040(8)(i). In 2005, the Marion County Board of Commissioners approved a comprehensive plan change from Primary Agriculture to Rural Residential and a zone change from EFU to AR-10. Since the land was zoned with a ten acre minimum, no exception to Goal 14 was necessary.
7. OAR 660-004-0040(8)(i)(B) permits zoning with as low as a two acre minimum parcel size to be applied to property designated as rural residential after October 4, 2000, if an exception to Goal 14 is taken. The minimum lot size adopted by the county must also be consistent with OAR 660-004-0018.

8. OAR 660-004-0010(1)(d)(D) establishes that an exception to Goal 14 must follow the applicable requirements in OAR 660-014-0030 or 660-014-0040, in conjunction with the requirements in OAR 660-004. OAR 660-014-0030 applies to rural lands irrevocably committed to urban level of development and the criteria in OAR 660-004-0028 also apply. 660-014-0040 applies to the establishment of new urban development on undeveloped rural lands, and is essentially a “reasons” exception, and the criteria in OAR 660-004-0020 and -0022 also apply.
9. OAR 660-014-0030: The applicants calculate the average parcel size in the adjacent Acreage Residential area to be 2.99 acres. In 2000, DLCD determined that parcels two acres and greater on rural residential land existing at that time was considered rural. Parcels smaller than two acres were determined to be urban. Since the average parcel size of the adjacent Acreage Residential land is greater than 2 acres, it appears to still be rural in nature. An exception to Goal 14 must demonstrate how the land is irrevocably committed to an urban level of development. Since adjacent lands are still considered to be rural based on DLCD’s rules, that land cannot commit the subject property to urban development. This exception would appear to apply in other circumstances, such as rural residential development in subdivisions with existing smaller than two acres parcel sizes which DLCD determined to be urban in nature. This circumstance may commit a nearby property to an urban level of development and permit a lot size of less than ten acres to be applied.

OAR 660-004-0028: The applicants reference the original exception from Primary Agriculture to Rural Residential to address OAR 660-014-0028, but do not identify how that evidence and those findings address the criteria in rule as it applies to a Goal 14 exception. This rule does not appear to be satisfied.

OAR 660-014-0040: The applicants make arguments related to this rule but do not appear to address specific criteria in the rule. This rule does not appear to be satisfied, but need not be addressed if the applicants are applying for an irrevocably committed exception instead.

OAR 660-004-0020 and -0022: The applicants did not address this rule, but need not addressed it if the applicants are applying for an irrevocably committed exception instead.

OAR 660-004-0018: The applicants do not appear to address this rule. This rule must be applied to ensure that rural land does not require urban levels of services. The proposed zoning must retain the land as rural in all other aspects aside from the minimum parcel size to ensure that the requirements of this rule are satisfied. It is not clear that developing land with a minimum parcel size of two acres would maintain the land as rural, would not commit adjacent lands to uses not allowed by the goal, and would be compatible with adjacent and nearby resource uses.

STATEWIDE PLANNING GOALS

10. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. The applicants address the goals, but from the discussion above, it is not clear that an exception to Goal 14 is justified. It is also not clear, without at a minimum demonstrating satisfying OAR 660-004-0018, that the proposed lower minimum parcel size will not have an impact on nearby resources uses such as farming. In addition, the applicants have not demonstrated that the proposed lower minimum parcel size will satisfy Goal 11 - Public Facilities and Services by ensuring the development not cause a reliance on an urban level of services.

COMPREHENSIVE PLAN AMENDMENT

11. 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.

12. 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 parcel of land and the proposal can therefore be considered under the quasi-judicial amendment process.
13. The proposal must be consistent with applicable policies for Rural Residential developed contained in the comprehensive plan. These policies include:
 8. *Since there is a limited amount of area designated Rural Residential efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than 2 acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10 acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.*
 9. *When approving rural subdivisions and partitionings each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel.*
 10. *All residential uses in rural areas shall have water supply and distribution systems and sewage disposal systems which meet prescribed standards for health and sanitation.*

The applicant addressed the criteria in the comprehensive plan and the proposal appears consistent with the Rural Residential policies in the Marion County Comprehensive Plan if the Goal 14 exception requirements were satisfied.

ZONE CHANGE CRITERIA

14. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:
 - 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.*
15. The applicants address the zone change criteria and the proposal appears consistent with the density and pattern of development on nearby land zoned Acreage Residential. It may be that the proposed change to a lower minimum parcel size will satisfy the criteria in (C); however, the applicant did not address the criteria in OAR 660-004-0018, so it is uncertain if this criterion is met. Although the county is not required to provide residential land in the manner that cities are, there may be other land in the county that a single-family dwelling could be placed upon or that could be divided up to permit the placement of a single-family dwelling. The applicant does not adequately address why others land in the county is unavailable or not well suited for a single-family residence. Since the applicant did not address the criteria in OAR 660-

004-0018, it is not possible to determine whether the proposed change in minimum parcel size would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses. It does not appear the applicant has met the criteria for a zone change.

PARTITION

16. 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.
17. 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 each be at least two acres each and are consistent with this standard. In addition, the resulting undeveloped parcels, if they can obtain septic approval, appear to be of sufficient size and shape to meet the development standards in the AR zone.
18. MCC 17.128.050 establishes special siting standards for dwellings near resource zones:
 - (a) Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.
 - (b) The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.

The special setback in #9(a) can be applied to any approval. #9(b) 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. Any approval can be conditioned to meet this criterion.

19. Both parcels would appear to have frontage on Abiqua Road; therefore, no easement should be required. However, both properties may share a common driveway off Abiqua Road.

CONCLUSIONS

20. Based on the above discussion, staff recommends the exception to Goal 14 and the zone change from AR-10 to A-2 be denied. In addition, since the zone change is not recommended to be approved, staff recommends the partition be denied.
21. If applicant’s request is recommended for approval, Planning recommends the following conditions be applied:

Prior to recording the final plat:

- A. 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 19-001. Following plat approval it shall be recorded with the Marion County Clerk.
- B. Prior to 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.
- C. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
- D. 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.
- E. 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).
- F. On the plat, depict reciprocal access easements such that both parcels share a single access to Abiqua Road.
- G. Prior to plat approval, obtain an Access Permit, and under the Permit, pave the shared driveway approach in hot mix asphalt, and, conduct limited roadside vegetation trimming in support of adequate Intersection Sight Distance.

Prior to issuance of building permits on the resulting parcels:

- H. The partition plat shall be recorded.
- I. 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.
- J. The applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
- K. Prior to issuance of building permits, the applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement 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.
- L. Any dwelling shall maintain 100 foot setback from land in farm use to the west and southwest.
- M. In accordance with Marion County Code 11.10, a driveway "Access Permit" for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards.
- N. 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.

- O. 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.

Additional conditions:

- P. 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. All parcels shall be a minimum two acres in size, prior to any right-of-way dedication.
- Q. 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.
- R. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
- S. The applicant should contact the Silverton 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.
- T. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories that may be required.