



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: February 5, 2025

Department: Public Works

Title: Receive notice of Hearing Officer's decision approving Partition case 24-005/Marriane Taylor

Management Update/Work Session Date: N/A Audio/Visual aids []

Time Required: 0 Min Contact: John Speckman Phone: 503-566-4173

Requested Action: Receive notice of Hearings Officer's decision approving Partition 24-005/Marriane Taylor.

Issue, Description & Background: The Marion County Hearings Officer held a duly noticed public hearing on September 5, 2024 and on January 21, 2024 issued a decision approving the request. As part of the land use process, the Marion County Board of Commissioners must receive notice of the decision.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Hearings Officer Decision

Presenter: John Speckman

Department Head Signature: [Handwritten Signature]

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. 24-005
MARIANNE TAYLOR) **PARTITION**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application Marianne Taylor to partition a 4.34-acre parcel into two parcels consisting of 2.00 and 2.34-acre parcels in an AR (Acreage Residential) zone located at 7478 Sherman Rd. SE, Aumsville (T8S, R1W, Section 29A, Tax Lot 1200).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code (MCC) Chapter 17, particularly MCC 17.128 (Acreage Residential Zone) and MCC 17.181 (Sensitive Groundwater Zone).

III. Public Hearing

A public hearing was held on this matter on September 5, 2024. At the hearing, the Planning Division file was made a part of the record. The following persons appeared at the hearing, and provided testimony and/or argument on the application:

- | | | |
|----|-----------------|-----------------------------------|
| 1. | John Speckman | Marion County Planning Division |
| 2. | Marianne Taylor | Applicant |
| 3. | Thomas Schmid | Witness in Support of Application |
| 4. | Brent Anton | Witness in Support of Application |
| 5. | John Rasmussen | Marion County Public Works |
| 6. | Rob Garrison | Aumsville Fire Chief |
| 7. | Don Betker | Witness in Support of Application |

No objections were made to notice, jurisdiction, or conflict of interest. The following exhibits were admitted into the record at the hearing without objection:

- | | |
|------------|---|
| Exhibit 6: | Photograph showing south side (downside) of Sherman Road easement |
| Exhibit 7: | Photograph showing north side (uphill) of Sherman Rd. easement |
| Exhibit 8: | Copy of Thomas Schmid written statement |

IV. Executive Summary

Marianne Taylor submitted an Application to partition a 4.34-acre parcel into two parcels consisting of 2.00 and 2.34 acre parcels in an AR (Acreage Residential) zone located at 7478 Sherman Rd. SE, Aumsville. The Application was approved by the Planning Director with the condition of approval that access be provided by the existing easement Sherman Rd. SE instead of the use of Ivy Lane for driveway access to the approved partition.

The Staff Decision was appealed with respect to access to the property (conditions of approval). The original application contemplated access via an east-west easement to Ivy Lane. Applicant appealed the Decision with respect to the condition requiring use of an easement instead of Ivy Lane for access. Applicant meets the criteria for approval of the Partition Application. There is insufficient evidence to require that access to the parcel should be via the existing easement off Sherman Road that currently serves the parent parcel. The Application is APPROVED, and Applicant should be permitted to use Ivy Lane. Ivy Lane is already used by others, does not present additional or significant risk to public safety, and is best used for emergency services. Applicant has established compliance with all applicable criteria, and the Application is APPROVED without the condition requiring access via Sherman Rd.

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The subject parcel is located at 7478 Sherman Rd SE. The property contains a single-family dwelling and several accessory structures. It is partially wooded and currently in forest deferral. The southern portion of the property contains an easement for Ivy Ln SE, but the current dwelling is accessed off an easement that extends southwest from Sherman Road to the middle of the western property line of the subject parcel. The applicant proposed use of Ivy Lane SE for access, but due to intersection sight distance requirements of Marion County LDEP, the same access used for the existing dwelling will be used for the proposed new lot. Additionally, a fire/emergency vehicle access may need to be provided off Ivy Ln due to requirements of the Aumsville and Sublimity Fire Districts.

The parcel only has a deed history dating back to 1981 but the dwelling was built in 1973. The partition will create two legal lots that meet the minimum size standard for the AR zone, therefore this lot is considered legal for land use purposes.

3. This parcel is on the northern edge of an area primarily characterized by a mix of small farms and rural residential uses. Surrounding properties to the west and south are zoned

AR and are in rural residential use. Properties to the east are zoned EFU and are in rural residential use. The rural residential use extends 1-mile south to highway 22 and the UGBs of Sublimity and Stayton. Properties to the north are zoned EFU and in farm use. The agricultural use to the north extends over a large area of the county to the UGB of Silverton.

4. Applicant seeks to divide the subject parcel into two parcels with a new property line running roughly straight East-to-West where the existing access meets the property.
5. Marion County Planning contacted various governmental agencies. The following comments were received:

Marion County Septic Department commented: "For parcel 1, on the plot plan, dedicate an area on the lot that is large enough for a repair area. Parcel 2 requires a site evaluation."

Marion County Building Department commented: "Permits are required to be obtained prior to development of structures and/or utilities installation on private property."

Aumsville Fire District commented: "I have spoken to several people at your office about this issue. I understand that twelve or so years ago a letter was written about Ivy Lane by the Aumsville Fire Chief. I am confused as to why this happened as all of Ivy Lane is in the Sublimity Fire District. However, all the properties off the driveway in question are mostly in the Aumsville Fire District. I have made a couple of site visits concerning this issue. The letter stated that Ivy was too steep to get a fire apparatus up. This is not true. The road is steep, but I was able to drive our fire engine up Ivy with no issues. I understand that there is a sightline issue with Ivy being at the bottom of the hill. However, the sightline issue of the driveway is just as bad and possibly worse. It is also important to note that there are currently several homes on Ivy that would have to be accessed from Ivy in the event of an emergency.

Currently there are already five homes accessed off this driveway. The last house is over 1000 feet from the road and any new home would be even farther away. As you may know we carry 1000 feet of hose on our fire engines. Any fire back there would cause significant water supply issues. If a driveway was put in off of Ivy Lane, the water supply access would only be a few hundred feet at the most. As I stated neither of these accesses are ideal however in my opinion having the access off of Ivy Lane would be the best access for Emergency vehicles."

Sublimity Fire District commented: "Allowing access to the partition/dwelling off the private road, which lies completely in AFD, maybe in violation of the currently adopted fire code that they are using. Contact with AFD would need to be made to confirm whether this access is allowed by them or not.

An additional conflict to access is that LDEP rules require that the partition/dwelling off the private road, which lies completely in AFD, may be in violation of the currently

adopted fire code that they are using. Contact with AFD would need to be made to confirm whether this access is allowed by them or not.

Alternatively, the option of a fire access easement off Ivy Ln has been proposed. Since the proposed access lies in SBF, and the proposed dwelling lies in AFD, both districts would need to be involved. SBF is open to this idea and is willing to work cooperatively with AFD should they agree to the fire access easement. I do have concern over the grade and vertical and horizontal clearance of Ivy Ln. This would need to be addressed as well.”

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Engineering Requirements

- A. An Access Permit will be required for a new dwelling. Access shall be shared to both parcels via the developed 30-foot access easement off the E-W segment of Sherman Road as depicted on PP99-136, serving the parent parcel. For the purposes of access associated with building permits, no access from Ivy Lane will be approved based upon past denial by the Aumsville Fire Dept. due in part to Ivy Lane’s steeper grade. Furthermore, there is substandard available Intersection Sight Distance from Ivy Lane looking north on Sherman Road from the perspective of adding traffic to that lane.
- B. Transportation Systems Development & Parks charges will be assessed upon application for building permits for a new dwelling.
- C. Utility extension work in the public right-of-way requires permits from PW Engineering.

Marion County Survey Department commented:

- 1) Parcels of ten acres and less must be surveyed.
- 2) Per ORS 92.050, plat must be submitted for review
- 3) Checking fee and recording fees required
- 4) A title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

Marion County Tax Assessor provided tax information about the subject property.

All other contacted agencies either failed to comment or stated no objection to the proposal.

6. Marion County Planning Staff John Speckman presented the staff report. Mr. Speckman reiterated that the site distance limitation precludes use of Ivy Lane for access and addressed the secondary fire access.
7. Marianne Taylor testified at the hearing. Ms. Taylor appealed the condition set forth in the staff decision to use the existing easement of Sherman Rd. SE instead of the requested use of Ivy Lane for driveway access to the newly approved partition. Ms. Taylor stated in her submission that she and/or her family have lived on the property since 1982 and have not ever witnessed an accident on Sherman Road. Ms. Taylor stated that she has driven the road for over 35 years and has used Ivy Lane without issue. Ms. Taylor testified that there are no specific criteria for site distance limitation. Ms. Taylor testified that her objection to the decision is with respect to the condition of approval preventing her from using Ivy Lane. Both Sherman Road and Ivy Lane have limitations and safety concerns. Ms. Taylor testified that Ivy Lane is an easement that is located on her property, is an established active road, and is used by other residences for access. Ms. Taylor testified that using Sherman Road would require removal of sequoia trees, which could have an impact on the current property timber deferral. Ms. Taylor testified that she is concerned that a condition requiring a separate fire and emergency access off Ivy Lane, in addition to use of the existing driveway could cause confusion in an emergency. Ms. Taylor testified that there is existing confusion between Sublimity and Aumsville Fire districts about coverage. Ms. Taylor testified that the denial of use of Ivy Lane because of fear of accidents from careless is not well taken because the problem lies with signage on the highway. Ms. Taylor also challenges a condition that would require her to create a separate fire and emergency access off Ivy Lane in addition to creating the official driveway access off the existing Sherman Road driveway. Ms. Taylor addressed that the separate emergency access in addition to the driveway could cause confusion to emergency response service providers.
8. Thomas Schmid testified at the hearing. Mr. Schmid testified that this decision impacts other users of the private easement (Sherman Rd.). Mr. Schmid testified that he agrees with approval of the Application and agrees with Ms. Taylor that access for the parcel needs to be on Ivy Lane. Mr. Schmid testified that Sherman Road is a private easement that is privately maintained and does not need additional users. Mr. Schmid stated that there are five houses on Irish Glen that use Ivy Lane, and there would not be significant impacts by use for one additional residence.
9. Brent Anton testified at the hearing. Mr. Anton testified that the existing driveway is one car width. Mr. Anton testified that because of the existing sequoia trees, requiring access on Sherman Road would require removal of the sequoias. Mr. Anton is opposed to cutting the sequoia trees. Mr. Anton expressed that Ivy Lane has already been in long-term use, and its use as an access should be continued for the parcel.
10. Both Mr. Schmid and Ms. Taylor expressed that to the extent that there are safety issues, the issue could be addressed by warning signs installed by Marion County.

11. John Rasmussen, Marion County Public Works, testified at the hearing. Mr. Rasmussen stated that to the lay person, the relative safety of using Sherman Road or Ivy Lane may appear similar. However, the available site distance on Sherman Road is better than it is on Ivy Lane. Mr. Rasmussen testified that for vehicles travelling north on Sherman Rd, the grade flattens out at the driveway. Mr. Rasmussen testified about the stopping site difference and the intersection site distance and stated that Sherman provides adequate site distance. Mr. Rasmussen testified that the existing homes that are accessed by Ivy Lane have been there since the 1980s, and at that time there were no site distance measurements for intersection site distance measurements. Mr. Rasmussen provided testimony about the issues inherent with the location of the intersections. Mr. Rasmussen testified that speed can be an issue with or without a passing zone, and Sherman Rd has a 55 mph limit. Mr. Rasmussen testified that with the 10% downgrade, there is approximately one-half of the appropriate stopping distance available for the rate of speed. Mr. Rasmussen emphasized that the downgrade of the road exacerbates the potential for concern. Mr. Rasmussen indicated that emergency fire access is an incidental concern. Mr. Rasmussen testified that Ivy Lane only provides 50% of the appropriate stopping distance as opposed to Sherman Rd.
12. Fire Chief Rob Garrison testified at the hearing. Chief Garrison testified that the subject property is split between the Aumsville and Sublimity Fire districts for response. Chief Garrison testified that there is significant concern about which department response to the property and how to get to the property. Chief Garrison testified that the current driveway is located off a sharp corner, and that 1,000 feet of hose would be required to reach Ms. Taylor's home, which would require tenders. Chief Garrison testified that there are already access issues, and that Ivy Lane access is preferable for emergency response vehicles.
13. Don Betker testified at the hearing. Mr. Betker testified that he is in support of Ms. Taylor's application and agrees that using Ivy Lane instead of Sherman Rd. is preferable. Mr. Betker testified that he moved to his property in 1983, and that residents have used Ivy Lane without difficulty since that time. Mr. Betker does not believe that the addition of residence will have a significant impact on the use of Ivy Lane.
14. In rebuttal, Marianne Taylor stated that she appreciates Mr. Rasmussen's concern about site distance considerations. Ms. Taylor stated that Ivy Lane is active and regularly used by residents. Ms. Taylor stated that statistically, there is not enough risk in adding one residence to the users of Ivy Lane and reiterated that the easement already exists. Ms. Taylor testified that an emergency service response was needed at her residence on Mother's Day, and the ambulance could not locate the residence. As a result, there was a 10-minute delay which could have a life or death consequence. Ms. Taylor stated that she wants the fire department to have access, and that is best achieved by accessing the parcel by Ivy Lane.
15. Mr. Rasmussen stated that access is not a land use issue, but an engineering issue.

16. Ms. Taylor stated that the safety resulting from emergency access issues is also a concern. Ms. Taylor questioned that if the safety of the existing roadway is of significant concern, why isn't the County taking measures to post warnings. Ms. Taylor objects to being denied the use of her property because of possible safety concerns when there are already residences that use Ivy Lane for access.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

2. Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants have not met their burden and the application must be denied. If the evidence for every criterion there's a hair or breath in applicant's favor the burden of proof is met and the application is approved.
3. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres and the new parcels are consistent with this standard. As such, the proposal meets the criteria for partitioning in the AR zone.
4. The issues for specific consideration before the hearings officer are whether the approval of the application should include conditions of approval that access to the parcel shall be via the existing easement off Sherman Road that currently serves the parent parcel and that any additional fire access may need to be provided by the applicant in coordination with Aumsville Fire District and Sublimity Fire District.

Applicant has shown that she is willing to address access with the Aumsville Fire District and the Sublimity Fire District as applicant is concerned about receiving emergency services. Additionally, as commented by Sublimity Fire District, since the proposed access lies in its district, and the proposed dwelling lies in Aumsville Fire District, both districts would need to be involved. Both Sublimity and Aumsville Fire Districts are open to work cooperatively regarding fire access and the easement.

Aumsville Fire Chief Garrison testified that Ivy Lane is preferable to Sherman Rd. for emergency access. Use of Sherman Rd. could also provide confusion since the existing residence is in Sublimity's district and the partition residence would be in Aumsville's district. The testimony of Chief Garrison and Ms. Taylor also support that there would

be less risk of confusion by emergency responders for property access in an emergency if the partition parcel was served by Ivy Lane by the Aumsville Fire District.

Aumsville Fire District also commented that Ivy Lane is not too steep to access with a fire engine. This is an important fact: Marion County Engineering commented that no access from Ivy Lane should be approved based upon past denial by the Aumsville Fire Department due in part to Ivy Lane's steeper grade.

5. The current users of Sherman Road testified about their concerns for removing multiple sequoia trees to accommodate access to the new parcel via the Sherman Road easement. Allowing access on Ivy Lane to the new parcel would eliminate the concerns of removal of the trees and any impact on timber deferral.
6. Ivy Lane is presently used by the five (5) residences on Irish Glen. Ivy Lane is already being used, and there is no evidence to support that the addition of one residence with access via Ivy Lane would significantly increase safety risks to the public.
7. There are safety issues associated with the use of Ivy Lane because Ivy Lane is at the bottom of the hill, and site distance is a concern. However, the presented testimony indicates that the safety risk lies in the speed and carelessness of drivers on the highway. The safety risk could be mitigated by warning signs. The potential risk that is inherent with use of Sherman Road or Ivy Lane, as acknowledged by the witnesses (most specifically Chief Garrison), does not justify requiring use of Sherman Road to access the new parcel (which would also deny Ms. Taylor the right to use of her property).
8. Chapter 17.181 MCC establishes provisions for partitioning property in an SGO zone. In the SGO-6 zone, creating a parcel less than six acres in size requires the applicants to submit a "Hydrology Review" meeting the provisions listed in MCC 17.181. The review indicates that there is a sustainable long-term supply of ground water for the proposed development. Marion County requires a Declaratory Statement be recorded with the property deed. The Declaratory Statement notifies Applicant and subsequent owners that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells. The County also requires submission of static water level measurements prior to recording the plat for all existing wells, and prior to building permits for all undeveloped parcels.

VII. Order

MCC 17.128.070 requires a minimum lot size of two acres. The new parcels are consistent with this standard. It is hereby found that Applicant Marianne Taylor has met the burden of proving applicable standards and criteria for approval without requiring use of Sherman Road for access. Therefore, the application for partition is APPROVED, with the following conditions:

Prior to recording the final plat:

1. Applicant shall obtain approval for all permits, including subsurface sewage, as required by the Marion County Building Inspection Division.
2. Per the Marion County Surveyor's Office: Parcels of ten acres and less must be surveyed, and Per ORS 92.050, the plat must be submitted for review. Checking fee and recording fees required and a title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.
3. Prior to submitting the final partition plat, Applicant shall provide a static water level measurement for the existing well on the enclosed form.

Prior to issuance of building permits on the resulting parcels,

4. Applicant shall provide a static water level measurement for any new or existing wells intended as the water supply for the lot on the enclosed form.
5. Applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement (enclosed) to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

6. 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 of two acres in size.
7. After the final Partition plat has been recorded 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 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 restrictions or conditions. The applicant is advised of the following:

8. 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).
9. Applicant should contact the Aumsville Fire District and the Sublimity 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.

10. Applicant should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories.

VIII. Effective Date

The application approved herein shall become effective on the 5th day of February, 2025, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this Order. In case of review by the Board of Commissioners, this Order shall be stayed and shall be subject to such final action as is taken by the Board.

IX. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An Appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem, Oregon) by 5:00 p.m. on the 5th day of February, 2025. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500.00, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300.00 of the appeal fee will be refunded.

DATED at Salem, Oregon this 21st day of January, 2025.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Marianne Taylor
PO Box 333
Sublimity, OR 97325

Tax Collector (via email)
Rweisner@co.marion.or.us
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Tom Schmid
7496 Sherman Rd. SE
Aumsville, OR 97325

Surveyor's Office (via email)
KInman@co.marion.or.us

Don Bekker
7486 Sherman Rd. SE
Aumsville, OR 97325

Fire District: (via email)
Aumsville Fire District
PO Box 247
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Rob Garrison
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Sublimity Fire District
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Brett Anton
7478 Sherman Rd.
Aumsville, OR 97325

Area Advisory Committee 2: (via email)
Dennis Koenig
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Planning Division (via email)
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Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
CTate@co.marion.or.us

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

School District:

North Santiam School District *(via email)*
1155 North 3rd Ave.
Stayton, OR 97383
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Code Enforcement: *(via email)*

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JTaylor@co.marion.or.us
ccaballero@co.marion.or.us

State Agencies Notified: *(via email)*

Water Resources
725 Summer St., Ste. A
Salem, OR 97310
Mike.l.mccord@wrд.state.or.us
Gregory.j.wacker@oregon.gov

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 21st day of January, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer