

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 that 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 below. 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. 22-003**

APPLICATION: Application of Kevin and Peggy Schindler for a property line adjustment to adjust the property lines on a 21.18 acre parcel and a 0.23 acre parcel to create an 18.83 acre parcel and a 2.58 acre parcel in an EFU (Exclusive Farm Use) zone located at 19984/19944 Arbor Grove Road NE, St. Paul. (T4S, R2W, Section 24, Tax Lots 500 and 600).

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 **March 29, 2024**. 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. Proposed 2.58 acre property must be surveyed per ORS 92.060(7) and the survey submitted for review. No survey required for the proposed 18.83 acre property.
2. 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 requires perimeter descriptions of the resultant properties.
3. Checking fee and recording fees will be required.
4. A current or updated title report must be submitted at the time of review.
5. Must comply with all requirements listed in Finding #6.
6. Prior to planning signing off on the survey, one of the houses proposed to be located on the 2.58 acre parcel must be removed, decommissioned, or destroyed. Please contact the Marion County Building Department for permit requirements.
7. New property lines must be at least 20 feet away from the existing structures on the property.

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

8. 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.

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) based on 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 **March 29, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 30, 2022**, 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 Exclusive Farm Use (EFU). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The properties are located on the east side of Arbor Grove Road NE, approximately 0.33 miles north of the intersection of Arbor Grove Road NE and St. Paul Highway NE. Tax lot 600 is developed with two dwellings and a shop building. There is only one legal dwelling approved on the property. The property owners applied to build a replacement dwelling (approved as building permit 555-21-004760). As a condition, the original dwelling must be destroyed, decommissioned, or removed within 90 days of a Certificate of Occupancy being issued. Tax lot 500 is developed with a dwelling. Tax Lot 600 was first described in its current configuration via deed recorded as Volume 707, page 79 on June 30, 1977, and is considered legal for the purposes of land use. Tax Lot 500 was first described in its current configuration via deed recorded as Volume 656, page 198 on November 1, 1968, and is considered legal for the purposes of land use.
3. Adjacent properties in all directions are zoned EFU and are in a mix of medium and large scale commercial farming operations.
4. Soil Survey for Marion County, Oregon, indicates approximately 100% of the soils on the subject tax lots are classified as high value, consisting of Amity silt loam (Am), Woodburn silt loam 0-3% (WuA), Wapato silty clay loam (Wc), Woodburn silt loam 12-20% (WuD), Woodburn silt loam 3-12% (WuC).
5. The applicants are proposing to adjust the property lines on a 21.18 acre parcel and a 0.23 acre parcel to create a 18.83 acre parcel and a 2.58 acre parcel.
6. Marion County Surveyor's Office commented:
 1. No survey required on the resultant property that is greater than ten acres.
 2. Parcels ten acres and less must be surveyed per ORS 92.060(7).

3. Survey checking fee required at the time of review
4. 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 acknowledgement.

[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 Building Inspection commented that there are no building inspection issues. Recommend new property lines be located at least 3 feet from existing structures. If new property lines are created less than 3 feet to existing structures, the existing structures may be required to be altered to increase exterior wall fire resistance.

Marion County Septic commented "if a home on the property is demolished, the septic system attached to the home must be decommissioned. Submit a tank abandonment form and note the drainfield is decommissioned as well. If a home is rebuilt on the property it will require an Authorization Notice for reconnection to septic."

Marion County Assessor's Office provided information regarding taxes on the subject properties.

Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.

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 17.137.090(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.*

Tax lot 600 is 21.18 acres in size and is proposed to decrease in size to 18.83 acres. Tax lot 500 is 0.23 acres in size and is proposed to increase in size to 2.58 acres. The minimum property size in the EFU zone is 80 acres. Based on these facts, none of the properties involved in the adjustment are larger than the minimum parcel size and none will be after the proposed adjustment. Based on these facts, this criterion does not apply.

- (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.*

Tax lot 500 is 0.23 acres in size and is proposed to increase in size to 2.58 acres after the proposed adjustment. Tax lot 600 is 21.18 acres in size and is proposed to decrease in size to 18.83 acres after the proposed adjustment. Based on these facts, none of the properties are larger than 80 acres before the adjustment. Based on these facts, this criterion does not apply.

- (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.*

The applicant states that the properties will continue to be farmed after the proposed adjustment. The configuration proposed by the applicant does not have any irregularly shaped boundaries that would be

less suitable for commercial agriculture than the current configuration. Based on these facts, this criterion is met.

- (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.*

No parcel will be increased to larger than the minimum parcel size. Both properties are already developed with a dwelling and neither dwelling was qualified based on an acreage standard. This criterion is met.

- (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.*

Both properties are developed with a dwelling, with tax lot 600 temporarily containing two dwellings as the original dwelling has been replaced with a new one but not yet decommissioned. After the proposed adjustment, the original dwelling from tax lot 600 will be located on tax lot 500. The applicant states in their application that they intend to remove the original home on tax lot 500 and keep the newly adjusted dwelling on the property. Removal of one of the dwellings on tax lot 500 will be made a condition of approval and the property line adjustment cannot be completed without completing this process. The proposed adjustment will not increase any adverse impacts on the continued practice of commercial agriculture both properties are developed with dwellings and no new dwellings are approved as part of this permit. Based on these facts, this criterion is met.

8. 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.
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, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 14, 2022

If you have any questions regarding this decision contact Alyssa Schrems 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.