

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. 22-017**

APPLICATION: Application of Barker Surveying on behalf of Lee & Jeanette Schurter and Kyle & Tamara Smilowski for a property line adjustment to adjust the property lines on a 76.14-acre parcel ("Property A") and a 7.20-acre parcel ("Property B") to create a 75.14-acre parcel and an 8.20-acre parcel in an EFU (Exclusive Farm Use) zone located at 2681 105th Avenue NE, Salem. (T7S; R1W; S18; Tax lots 300, 600, 700, and 701).

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 **May 7, 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 drain field 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 Marion County Clerk's Office. 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 Code 16.33.140 (E) and 17.172.120 (E)]
2. 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.
3. For the portion ten acres or less, it must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. No survey required on the portion that is greater than ten acres per Marion County Surveyor's Office comments (see findings and conclusions).

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

4. 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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 **May 7, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 9, 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 Exclusive Farm Use 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 southwest of the intersection of Kaufman Road NE and 105th Avenue NE; "Property A" is immediately adjacent to the intersection, while "Property B" is approximately one-third mile south of the intersection. Tax Lot 600 is developed with one dwelling and multiple accessory structures. Tax Lot 700 is developed with one dwelling and multiple accessory structures. Tax Lots 300, 700, and 701 together constitute a single legal parcel ("Property A") for planning purposes per the previously approved property line adjustment case LLA99-022. No further changes to Tax Lot 300, 700, or 701 were recorded by deed (or otherwise) since 1999, and so the property has remained legal. Tax Lot 600 ("Property B") has existed as a single legal parcel in its current configuration since before September 1, 1977, per a bargain and sale deed recorded in Volume 111, Page 1553 of the Deed Records of Marion County, Oregon. Both properties are considered legal parcels for the purposes of land use per Marion County Code 17.110.427.
3. The applicants' initial survey and application are proposing to adjust the property lines on a 61.64-acre parcel and a 7.20-acre parcel to create a 60.64-acre parcel and an 8.20-acre. However, as noted above in finding number two, "Property A" also includes Tax Lot 300. Therefore, Marion County Planning considers "Property A" to be a 74.47-acre parcel. In addition, the concurrent application PLA22-016 proposes to increase the size of "Property A" by 1.67 acres. Therefore, Planning ultimately concludes the initial size of "Property A" to be 76.14 acres.
4. Adjacent properties in all directions are zoned EFU (Exclusive Farm Use) and in a mix of small to large scale commercial farm use. One property to the northeast of "Property A" contains an existing church.
5. Soil Survey for Marion County, Oregon, indicates approximately 91.4% of the soils on the subject tax lots are classified as high value.
6. Marion County Surveyor's Office commented:

No survey required on the portion that is greater than ten acres. 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. 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)]

7. Marion County Septic commented that there is currently an open Major Repair application for 10554 Kaufman Road, it appears from the documents submitted that this adjustment will not interfere with the area approved under this permit application (555-21-005863). This repair permit was in response to a failing septic system.

8. Marion County Assessor's Office provided information regarding taxes on the subject properties.
9. 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.
10. 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:

1. *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection (A)(1) of this section, 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.*

“Property A” (Tax Lots 300, 700, and 701) is 76.14 acres in size per finding number three and is proposed to decrease in size to 75.14 acres. “Property B” (Tax Lot 600) is 7.20 acres in size per the initial survey and is proposed to increase in size to 8.20 acres. The minimum property size listed in MCC 17.136.090(A)(1) for EFU parcels is 80 acres. Based on these facts, both parcels are smaller than the minimum size and therefore this section does not apply.

2. *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.*

“Property A” is 76.14 acres in size and is proposed to decrease in size to 75.14 acres. “Property B” is 7.20 acres in and is proposed to increase in size to 8.20 acres. No parcel larger than 80 acres will be reduced to less than 80 acres. Based on these facts, this criterion is met.

3. *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.*

This property line adjustment will configure the properties so that “Property B” will gain a portion of land that consists of a wooded area not being actively farmed. This portion of land currently serves as a buffer between the farm activity and non-farm activity, and the adjustment will support the continued use of this buffer. The 1.0-acre portion of “Property A” that is being transferred predominately consists of a sloped riparian area that is not ideal for farm activity. The usability of “Property A” for commercial farming will not be impacted. This adjustment is just as suitable for commercial agriculture as the previous configuration, as no significant barriers to farming will be created by the new property lines. Per the applicant survey and statement, the property line adjustment will furthermore resolve an encroachment by “Property B’s” dwelling onto “Property A.” Based on these facts, this criterion is met.

4. *A property line adjustment may not be used to:*

- a. *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;*
- b. *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*
- c. 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.*
 - d. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.*

No parcel will be increased to larger than the minimum parcel size. No parcel was created via subdivision or partition authorized by a Measure 49 waiver. "Property A" is developed with a dwelling approved pursuant to FD90-4. "Property B" is developed with a dwelling built in 1901 according to the tax records, and therefore predates zoning law. Neither dwelling was qualified based on an acreage standard. The criterion is met.

- 5. 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:*
 - a. Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
 - b. Does not increase the potential number of dwellings on the resulting parcels.*

No dwellings will be located on different parcels, nor will the adjustment allow for additional dwellings or adversely impact the practice of commercial agriculture. The criterion is met.

11. 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.
12. 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.
13. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in a EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 22, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.