

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. 22-019**

APPLICATION: Application of Robin Alan Duer and Frances Goates for a property line adjustment to adjust the property lines on a 0.92-acre parcel and a 6.22-acre parcel to create a 1.26-acre parcel and a 5.88-acre parcel in an FT (Farm Timber) zone located at 19527 Drakes Road SE, Silverton. (T7S; R1E; S26C; Tax Lots 1100 and 1200).

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 27, 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 well, septic, and drain field replacement area requirements, 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. 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.
2. Must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review.
3. 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)]

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) on the basis of 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 27, 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 28, 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 Farm/Timber in the Marion County Comprehensive Plan and correspondingly zoned FT (Farm/Timber). The primary intent of both this designation and zone is to promote and protect forest lands and mixed forest-agriculture operations, while also providing for other uses that maintain the quality of air, water, and land resources.
2. Adjacent properties in all directions are zoned FT (Farm/Timber). Most properties are smaller parcels and are not actively in farm or forest use. A few exceptions exist in the surrounding area, such as couple properties to the west and one property to the east which contain medium scale farm operations.
3. The subject properties are located west of intersection of Silver Falls Drive SE (State Highway 214) and Drakes Road SE. Tax Lot 1100 currently has frontage on both roads but is accessed along Silver Falls Drive approximately 900 feet northwest of the intersection. Tax Lot 1200 is located approximately 1100 feet west of the intersection off Drakes Road. Tax Lot 1100 is developed with one dwelling (approved as a non-farm dwelling pursuant to CU91-098) and multiple accessory structures. Tax Lot 1200 is developed with one dwelling and one accessory structures. The current dwelling on Tax Lot 1200 appears to have been a replacement for an existing mobile home that existed on the property at least prior to 1979.
4. Tax Lot 1100 is a single legal parcel per the previously approved conditional use case CU91-098. No further changes to Tax Lot 1100 were recorded by deed (or otherwise) since, and so the property has remained legal. Tax Lot 1200 has existed as a single legal parcel in its current configuration since before September 1, 1977, per a warranty deed recorded in Volume 719, Page 101 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.
5. Marion County Tax Assessor records show that Tax Lot 1100 is owned by Frances P. Goates and James D. Goates as tenants by the entirety. A death certificate was provided for James D. Goates. Therefore, Frances P. Goates signature satisfies the requirement of signatures from all property owners.
6. The applicants' initial survey and application are proposing to adjust the property lines on a 6.22-acre parcel and a 0.92-acre parcel to create a 5.88-acre parcel and a 1.26-acre parcel.
7. Soil Survey for Marion County, Oregon, indicates approximately 99.0% of the soils on the subject tax lots are classified as high value.
8. Marion County Surveyor's Office commented:

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 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)]

9. Marion County Septic commented that the property line adjustment will not affect septic systems serving either property.
10. Marion County Assessor's Office provided information regarding taxes on the subject properties.
11. 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.
12. The criteria for reviewing lot line adjustments within an FT zone are listed in Chapter 17.139.090(D) 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 MCC 17.139.090(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 1100 is 6.22 acres in size per the initial survey and is proposed to decrease in size to 5.88 acres. Tax Lot 1200 is 0.92 acres in size per the initial survey and is proposed to increase in size to 1.26 acres. The minimum property size listed in MCC 17.139.090(A)(1) for FT parcels is 80 acres. Based on these facts, both parcels are smaller than the minimum size and therefore this section does not apply.

2. *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. Tax Lot 1100 is developed with a dwelling approved pursuant to CU91-098. Tax Lot 1200 is developed with a dwelling that replaced a previous mobile home that existed on the property at least prior to 1979, and therefore predates zoning law. Neither dwelling was qualified based on an acreage standard. The criterion is met.

3. *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 17.139.030(E) so long as the adjustment:*
 - a. *Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels;*
 - b. *Does not increase the potential number of dwellings on the resulting parcels; and*
 - c. *Does not 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.*

This property line adjustment will not relocate any of the existing dwellings to a different parcel. Therefore, these criteria do not apply.

13. Further criteria for reviewing lot line adjustments within an FT zone are listed in Chapter 17.139.090(E) MCC. This section states “*Property line adjustments if the land was predominately devoted to forest use on January 1, 1993*” shall comply with certain criteria. Based on historic aerial imagery and previous land use cases, neither of these parcels were predominately devoted to forest use on January 1, 1993, and therefore these criteria do not apply.
14. 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.
15. 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.
16. Based on the above findings, the applicants’ proposal meets the criteria for a property line adjustment in a FT zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: May 12, 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.