

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
ADMINISTRATIVE REVIEW CASE NO. 23-026**

APPLICATION: Application of RJM Investments LLC for an administrative review to determine the number of legal lots on a total of approximately 41.66-acres of land, and a replacement dwelling on tax lot 1100, in an EFU (Exclusive Farm Use) zone located at 9601 and 9603 Karg Ln SE, Aumsville (T9S; R1W; Section 07C; Tax Lots 1200, 1300 and 1400; Section 18B; Tax Lots 1000, 1100, 1200 and 1300).

DECISION: The Planning Director for Marion County has determined that tax lots 1200, 1300 and 1400 of Section 07C are separate legal lots. The dwelling on tax lot 1400 has been determined to have been legally established and can be replaced. Tax lot 1100 of Section 18B is a legal lot and the dwelling on it was legally established and can be replaced. Additionally, in Section 18B, tax lots 1200 and 1300, together, represent one legal lot. **However, Section 18B's tax lot 1000, was not lawfully established** and comprises one legal lot, together with tax lot 900 of Section 18B.

EXPIRATION DATE: This decision is valid only when exercised by **October 10, 2027** (four years), unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a combination Farm/Forest and Replacement Residence 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. (Declaratory Statement enclosed).
3. Applicants are strongly encouraged to resolve the illegal division of land which created tax lots 900 and 1000 of Section 18B located in Township 9, Range 1 West.

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 thereon. It is recommended that the agencies mentioned in the Findings and Conclusions section, #6, be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact the Stayton 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.
5. The applicants should contact the Santiam Water Control District at (503) 769-2669, 284 East Water St, Stayton.

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 appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **October 10, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 11, 2023**, unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture 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 agriculture operations.
2. The subject properties create a strip of land bounded by the Union Pacific Railroad to the north and west, and the Gardner-Bennett Canal to the south with one tax lot, 1000, connecting the strip of land to Bean Alley Rd SE, approximately 1,425 feet north of its intersection with Snoddy Dr SE. Tax lots 1200 and 1300 (Section 07C) are bare land, while tax lot 1400 has one legal dwelling on it built in 1965, along with farm/accessory structures. In Section 18B tax lots 1200 and 1300 are bare land, 1000 has a farm structure on it, and tax lot 1100 has one legal dwelling, a 528 square foot 1969 single wide Holiday Villager manufactured home, as well as several small accessory structures.

Tax lots 1200, 1300, and 1400 of Section 07C are located within the Sensitive Groundwater Overlay (SGO) zone. All subject properties are being commercially farmed. The Tracy Lateral Canal/Ditch runs through tax lot 1300 (Sec. 07C), the Karg Lateral Canal/Ditch runs through tax lot 1400 (Sec. 07C), and the Gardner-Bennett Canal runs along the south boundary of tax lot 1300 (Sec. 18B).
3. Surrounding properties are zoned EFU and are commercially farmed. Parcel sizes range from small to medium-large and there are a few homesites scattered throughout.
4. Soil Survey of Marion County, Oregon indicates that in Section 07C, approximately 92.3% of tax lot 1200, 99.6% of tax lot 1300, and 100% of tax lot 1400 are classified as high value soils. In Section 18B, approximately 99.3% of tax lot 1000 and 900 combined, 100% of tax lot 1100, and 99.7% of tax lots 1200 and 1300 combined are classified as high value soils.
5. The applicant is requesting a review to determine how many legal lots exist within the bounds of current day tax lots 1200, 1300, and 1400 of Section 07C, as well as tax lots 1000, 1100, 1200, and 1300 of Section 18B. Per Marion County Code 17.115, a proposed use, structure, or the legality of a lot or parcel may be reviewed as an administrative review when it requires an interpretation or the exercise of factual, policy, or legal judgement. Section 17.115.110 (A) states:

“The decision shall be made on the basis of the comprehensive plan and applicable standards and criteria in this title. The director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use, structure, lot or parcel or to the standards or criteria. Administrative review applications may be filed and shall be signed as required in MCC 17.119.020 and 17.119.025. Notwithstanding any other provisions of this title, the director or designee may forward any land use permit or application to the planning commission or hearings officer for a public hearing and initial decision.”

6. Marion County Code 17.110.427 defines a legal parcel as:

“Parcel” means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land

sales contract prior to September 1, 1977, excluding units of land created solely to establish a separate tax account.

7. Various agencies were contacted about the proposal and given an opportunity to comment.

Santiam Water Control District commented: “The property is within Santiam Water Control District (SWCD) and subject to our rules regulations and bylaws, and subject to a recorded water use and delivery contract . The land is covered with SWCD water rights and any replacement dwelling, new access or other changes will require district approval so that we may transfer or move water rights as appropriate. In addition district facilities (ditches) traverse the property and no impacts or interference with our easements to maintain them should be allowed without specific district approval.”

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

8. The applicant provided a recent deed (Instrument Number 2023-24467) for the lots, which was reviewed along with deeds taken from the Marion County Assessor and Clerk’s Office records, as well as recorded surveys and plats.

Tax lot 09-1W-07C-01200 has been described in its current configuration since at least Vol. 600 Page 319, which was recorded on April 30, 1965, and is therefore considered a LEGAL parcel for planning purposes.

Tax lot 09-1W-07C-01300 has been described in its current configuration since at least Vol. 562 Page 780, which was recorded on August 27, 1962, and is therefore considered a LEGAL parcel for planning purposes.

Tax lot 09-1W-07C-01400 has been described in its current configuration since at least Vol. 389 Page 613 (Tract 1), which was recorded on June 16, 1948, and is therefore considered a LEGAL parcel for planning purposes.

Tax lot 09-1W-18B-01100 has been described in its current configuration since at least Vol. 389 Page 613, (Tract 2) which was recorded on June 16, 1948, and is therefore considered a LEGAL parcel for planning purposes.

Tax lots 09-1W-18B-01200 and 09-1W-18B-01300 are described together as one unit of land since at least Vol. 662 Page 281, which was recorded on April 2, 1969, and continues to be described together as one unit of land today. Therefore, these two tax lots are considered one LEGAL parcel for planning purposes.

Tax lot 09-1W-18B-01000 and 09-1W-18B-00900 are described together as one unit of land in Vol. 636 Page 110, which was recorded on August 31, 1967. Staff was unable to find a legal description recorded prior to September 1, 1977, that described the two tax lots separately. The next deed that Staff could locate was Reel 151 Page 63, recorded on December 21, 1978. This was a contract sale which divided the parcel described in Vol. 636 Page 110 into two tax lots, 900 and 1000. This was done without Planning approval and after the Marion County Comprehensive Plan was adopted, which regulated land divisions in the EFU zone. Therefore, tax lot 1000 is determined to be NOT LAWFULLY created for planning purposes. Tax lot 1000 together with tax lot 900 of Section 18B comprise one legal lot.

In summary:

- Section 07C tax lots 1200, 1300, and 1400, and Section 18B tax lot 1100 are each considered separate, individual, **LEGAL** parcels of land for Planning purposes.
- Section 18B tax lots 1200 and 1300 are, together as one unit of land, considered a single **LEGAL** parcel for Planning purposes.
- Section 18B; tax lot 1000 has been determined to be **NOT LAWFULLY CREATED** parcel created by an unapproved division of land that resulted in the creation of tax lots 900 and 1000.

9. MCC 17.136.020(D) allows for the permitted use of the “Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.136.100(C).”

The existing dwellings on tax lot 1100 of Section 18B and tax lot 1400 of Section 07C have been determined to be lawfully established dwellings and a combination Farm/Forest and Replacement Residence Declaratory Statement shall be required for each prior to a building permit being issued. This shall be made a condition of approval. The criteria is met.

10. Based on the above findings, it has been determined that tax lots 1200, 1300 and 1400 of Section 07C are separate legal lots. The dwelling on tax lot 1400 has been determined to have been legally established and can be replaced. Tax lot 1100 of Section 18B is a legal lot and the dwelling on it was legally established and can be replaced. Additionally, in Section 18B, tax lots 1200 and 1300, together, represent one legal lot. **However, Section 18B's tax lot 1000, was not lawfully established** and comprises one legal lot, together with tax lot 900 of Section 18B.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 25, 2023

If you have any questions regarding this decision contact Nicole Inman 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.