

**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  
PARTITION CASE NO.21-018**

**APPLICATION:** Application of Maple Hill Farm LTD to partition a 21.46 acre parcel into a 20.46 acre parcel and a 1 acre parcel in an EFU (Exclusive Farm Use) and P (Public) zone located at 10705 Waypark Dr. NE, Mt. Angel. (T6S, R1W, Section 5, Tax Lot 1600).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Partition application subject to certain conditions.

**EXPIRATION DATE:** This approval is valid only when the final partition plat is recorded by **September 15, 2023**. The effective period may be extended for an additional year subject to approval of an 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 division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposal the applicant should contact 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 applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition Case 20-007. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed). **This shall be accomplished prior to issuance of any building permit(s) on the resulting parcels.**
2. Parcels 10 acres or less must be surveyed.
3. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
4. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final Mylar to the County Surveyor.
5. The access easement shall meet the 10' setback minimum from the drainfield and the 5' minimum setback from all other septic components.
6. The applicant shall sign and submit a Farm/Forest 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.
7. 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.

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

8. 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 any restrictions or conditions. It is recommended that agencies mentioned in Finding # 5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

9. 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).
10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #7 below, that may be required.

**APPEAL PROCEDURE:** The Marion 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, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on

**September 15, 2021.** If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 16, 2021** unless further consideration is requested.

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

1. The property has a mixed designation with 20.46 acres designated as Primary Agriculture in the Marion County Comprehensive Plan and zoned Exclusive Farm Use (EFU) and 1.0 acres designated as Public and Semi-Public in the Marion County Comprehensive Plan and zoned Public (P).
2. The subject property is developed, the larger parcel is a working farm with a home site and accessory structures, and the 1.0 acre parcel is a designated cemetery and use as such. The property was part of land use case PLA12-004 and is considered legal for the purposes of land use.
3. The property is located on Waypark Dr. approximately 1.4 miles east of its intersection with Howell Prairie Rd. Properties are zoned EFU in all directions and consist of medium to large scale commercial farms that are generally developed with farm related structures or homesites.
4. Marion County Soil Survey reveals 74.2% of the property is high value soil:

| VALUE                | ACRES | PERCENT |
|----------------------|-------|---------|
| High Value Soils     | 16.5  | 74.2%   |
| Non High Value Soils | 5.8   | 25.8%   |

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

## ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required to pave the existing driveway approach. Paving is required to maximize tire purchase during egress maneuvers since the Intersection Sight Distance looking south is somewhat limited by the horizontal roadway curve at about 90% of the required of 350 feet due to vegetation on the inside of the curve.
- B. Transportation System Development & Parks Charges will be assessed at the time of application for building permits.
- C. Utility work in Davis Creek Road requires utility permitting from PW Engineering.

### Marion County Survey commented:

- 1. Per ORS 92.055 – Parcels over 10 acres can be unsurveyed.
- 2. Parcels ten acres and less must be surveyed.
- 3. Per ORS 92.050, plat must be submitted for review.
- 4. Checking fee and recording fees required.
- 5. A current or updated 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 Septic commented that the access easement shall meet the 10' setback minimum from the drainfield and the 5' minimum setback from all other septic components.

Marion County Tax Assessor commented regarding taxes.

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

- 6. Chapter 17.136.090(A) and (B) allows for the creation of new non-farm parcels subject to the criteria listed below.

### **17.136.090** Minimum parcel size, divisions of land, and property line adjustments.

The following regulations apply when property line adjustments and partitioning of land within an EFU zone subject to the provisions of Chapter 17.172 MCC are proposed:

#### *A. Minimum Parcel Size for Newly Created Parcels.*

##### *1. Farm Parcels. The minimal parcel size for new farm parcels shall be calculated as follows:*

- a. All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*
- b. The average (mean) size of all parcels larger than 40 acres identified in subsection (A)(1)(a) of this section shall be determined.*
- c. The acreage size calculated in subsection (A)(1)(b) of this section, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

##### *2. Non-Farm Parcels. A new non-farm parcel created pursuant to subsection (B) of this section shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses.*

*B. Requirements for Creation of New Non-Farm Parcels.*

- 1. A new non-farm parcel may be created for uses listed in MCC 17.136.040(C) and (K) and MCC 17.136.050, except the residential uses in MCC 17.136.050(A) and (B).*
- 2. The criteria in MCC 17.136.060 applicable to the use shall apply to the parcel.*
- 3. A non-farm parcel shall not be approved before the non-farm use is approved.*
- 4. A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.*
- 5. If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following criteria:*
  - a. A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.*
  - b. A parcel created pursuant to this subsection that does not contain a dwelling:*
    - i. Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;*
    - ii. May not be considered in approving or denying an application for siting any other dwelling;*
    - iii. May not be considered in approving a redesignation or rezoning of forest lands or farmlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and*
  - c. May not be smaller than 25 acres unless the purpose of the land division is:*
    - i. To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or*
    - ii. To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.*
- 6. A division of land smaller than the minimum lot or parcel size described in subsections (A) and (B) of this section may be approved to establish a religious organization including cemeteries in conjunction with the religious organization if they meet the following requirements:*
  - a. The religious organization has been approved under MCC 17.136.040(C);*
  - b. The newly created lot or parcel is not larger than five acres; and*
  - c. The remaining lot or parcel, not including the religious organization, meets the minimum lot or parcel size described in subsections (A) and (B) of this section either by itself or after it is consolidated with another lot or parcel.*
- 7. A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:*
  - a. The partition must occur along the urban growth boundary; and*
  - b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;*
  - c. If the parcel does not contain a dwelling, the parcel:*
    - i. Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;*

- ii. May not be considered in approving or denying an application for siting any other dwelling;  
and*
- iii. May not be considered in approving a redesignation or rezoning of forestlands under the  
acknowledged comprehensive plan and land use regulations, except for a redesignation  
or rezoning to allow a public park, open space or other natural resource use;*

*d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.*

In this instance this is an existing use with an existing zone, this partition is to allow the one acre portion currently zoned Public (P) will correspond with the size of the existing cemetery and allow for the remaining EFU parcel to be entirely zoned for farming. No new farm parcels are being created, and the partition will recognize existing zone boundaries. Since no new uses or farm parcels are being created, the above code criteria are not applicable.

7. Based on the above findings, the applicant's proposal meets any applicable criteria. The request is, therefore, **APPROVED** subject to meeting certain conditions

Joe Fennimore  
Planning Director

Date: August 31, 2021

If you have any questions regarding this decision contact Lindsey King 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.