

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/CONDITIONAL USE CASE NO. 19-029

APPLICATION: Application of Arthur and Mary Spada and GK Properties LLC to adjust the property lines on a 198.88 acre parcel and a 11.16 acre parcel to create a 189.84 acre parcel and a 20.20 acre parcel and then for a conditional use to establish an agricultural equipment manufacturing facility as a commercial activity in conjunction with farm use in an EFU (Exclusive Farm Use) zone located at 10590 Donald Road NE, Donald. (T4S; R1W; Section 17CB; Tax lot 4500 and Section 18; Tax lot 201).

DECISION: The Planning Director for Marion County **APPROVED** the above-described Conditional Use 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 and this conditional use permit is valid only when exercised by **October 30, 2021**. 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 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. The applicant shall obtain all required permits from the Marion County Building Inspection Division.

Property Line Adjustment

2. The applicants shall have both parcels re-platted per ORS 92.050. The re-plat shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment/ Conditional Use Case 19-029. (Final Plat Instructions enclosed).
3. The applicants shall record a property line adjustment deed for the area being transferred shall be recorded with the Marion County Clerk's Office, prior to the recording of the re-plat. Deed recording reference numbers shall be noted on the plat. As 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. Deeds conveying the re-platted parcels shall be recorded after the recording of the re-plat.
4. **Prior to recording the re-plat**, the applicants shall obtain septic review and/or evaluations that may be required from the Marion County Building Inspection Division. **The applicant is strongly encouraged to contact the Building Inspection Division, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
5. 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.

Conditional Use

6. Any expansion of the use in the EFU zone beyond what is approved in this decision shall require a new conditional use approval.
7. All lighting used to illuminate a parking or loading area shall be so arranged as to be directed entirely onto the loading or parking area, and shall be deflected away from any residential use and shall not cause a glare or reflection onto moving vehicles on public rights-of-way.
8. Only parking or storage of equipment associated with GK Machine is approved for the adjusted portion of the property in the EFU zone. Parking and storage areas shall be improved with an all-weather surface.

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

9. After the property line adjustment has been completed, no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
10. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

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.

11. The applicants should contact the Aurora 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.
12. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

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 **October 30, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 31, 2019** unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan. The intent of this designation and the corresponding EFU (EXCLUSIVE FARM USE) zone is to promote the continuation of commercial agriculture. A commercial activity in conjunction with farm use may be allowed provided the proposal complies with certain criteria.
2. The property is located on the south side of Donald Road NE, approximately 800 feet west of the intersection with Butteville Road. GK Machine Inc., manufacturing facility is located within the City of Donald on land zoned

Industrial with a comprehensive plan designation of Industrial. Conditional Use/Property Line Adjustment Case 05-29 approved the adjustment of property lines and a conditional use to create a storage yard approved for agricultural equipment. Similarly, Conditional Use/Property Line Adjustment Case 12-024 approved an adjustment of property lines and a conditional use to expand a storage yard for agricultural equipment.

3. Property to the west and south consist of large farm parcels while property to the north, in addition to being farmed, contains sewage lagoons for the City of Donald. These properties are zoned EFU. Properties to the east are located inside the Donald city limits and are in residential use.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is high-value farm soils.
5. The applicants are proposing to adjust the property lines on a 198.88 acre parcel and a 11.16 acre parcel to create a 189.84 acre parcel and a 20.20 acre parcel and then for a conditional use to expand the storage areas of an agricultural equipment manufacturing facility as a commercial activity in conjunction with farm use.
6. Public Works Land Development and Engineering Permits (LDEP) requested the following be included in the land use decision:

Engineering Requirement:

- A. Prior to development of the additional 9 acres for the proposed storage yard, submit a civil engineering plan addressing grading and stormwater capture, conveyance and detention. A PW Engineering Stormwater Permit is required, as well as a companion Building Department Rain Drain Plumbing Permit.

Engineering Advisory:

- B. DEQ regulates ground disturbing activities of 1.0 acre or more through issuance of the NPDES 1200-C Construction Stormwater Erosion Permit.

Marion County Surveyors Office commented: "No survey required. The resultant properties are greater than ten acres. A re-plat (in the form of a partition plat) is required, due to the adjustment of a partition plat parcel line or subdivision lot line. A property line adjustment deed for the area being transferred shall be recorded with the Marion County Clerk's Office, prior to the recording of the re-plat. Deed recording reference numbers shall be noted on the plat. As 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. The deeds conveying the re-platted parcels shall be recorded after the recording of the re-plat."

Marion County Building Inspection commented that permits are required for Change in Use, new construction, or Occupancy.

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 17.136.090(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.*
 - (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.*
 - (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.*
 - (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.*

(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.*

8. The EFU portion of the smaller parcel is less than 80 acres. The larger parcel it is being adjusted with is 199 acres. The portion of the land within the City of Donald is not affected by this property line adjustment. The applicants provided evidence that the minimum parcel size is 100 acres. The larger parcel would remain above the 100 acre after the property line adjustment is complete. The applicants describe that the parcel being farmed would continue to be farmed after the adjustment with minimal impact. There is no evidence that the size of the parcels are being adjusted in order that a dwelling could be approved where a dwelling could not be approved now. There is no existing dwelling on either parcel. The applicants meet the criteria for a property line adjustment.

9. In order to approve a commercial activity in conjunction with farm use the applicant must demonstrate compliance with the specific criteria listed in MCC 17.136.060(D). These include:

- (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
- (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
- (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
- (d) *The products and services provided must be essential to the practice of agriculture.*

10. The commercial activity that is the subject of this land use case was approved in CU05-29. The business still provides products and services primarily to agricultural operations in the local area. The proposed expansion would be used for additional storage of equipment from local commercial agricultural enterprises doing business with the applicant. The applicants' proposal subject to conditions, can meet the criteria for a conditional use in conjunction with farm use.

11. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:

- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

12. GK Machine Inc. is primarily located on land within the city limits of Donald. The Marion County hearings officer in CU/LLA96-69 determined that the machine business is a commercial business in conjunction with farm use and related to rural agricultural uses, so the use benefits farming in the area and will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. The applicant intends to store non-combustible material in the storage yard and there are fire hydrants available to the storage yard. The subject property is within the Aurora Fire District, which provides fire-fighting services and police protection is provided by the Marion County Sheriff. Other rural services are available on site or appear to be available to the property. The property is not located in significant wildlife overlay zones, or in a special watershed area. There are no significant groundwater impacts, nor special soils that could be impacted. The property is relatively flat with no unstable slopes. The applicant intends to maintain the surface as all-weather but permeable and the development would have to follow the guidelines of Marion County Land Developmental Engineering & Permits related to drainage. No manufacturing would occur in this area so any noise impacts are expected to not be significant and similar to any noise generated by the existing storage yard. There are no water impoundments identified in area, nor are there any significant mineral and aggregate sites.

13. Based on the above findings it has been determined that the applicants' request to adjust property lines and expand the existing commercial activity in conjunction with farm use meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: October 15, 2019

If you have any questions please contact Brandon Reich 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.