

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. 22-039**

APPLICATION: Application of Cameron and Elizabeth McCarthy & Gooding Farms, Inc. for a property line adjustment to adjust the property lines on a 78.9-acre parcel and a 39.65-acre parcel to create a 35.68-acre parcel and an 83.17-acre parcel in an EFU (Exclusive Farm Use) zone located at 22633 Riverside Drive NE, St. Paul. (T4S; R3W; Section 10; Tax Lots 600, 800, & 900).

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 **October 26, 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.

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

3. 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 Finding #6 below be contacted to identify restrictions or necessary permits.

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 **October 26, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 27, 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 two subject properties consist of Tax Lots 600 and 900 and 800. Tax Lots 600 and 900 are the southern parcel with Tax Lot 800 being the northern parcel. Tax Lots 600 and 900 are located at Riverside Drive NE and consists of a dwelling and three farm buildings on Tax Lot 600 with no structures on Tax Lot 900. Tax Lot 800 is located on Riverside Drive NE, as well and is undeveloped. All three tax lots are approximately 0.40 miles from the intersection of Riverside Drive NE and Ray Bell Road NE. Tax Lots 600 and 900 have not been the subject of any previous land use cases, while Tax Lot 800 has been the subject of one previous land use case, Special Exception 73-16 (SE73-16); SE73-16 was ultimately approved on August 16, 1973. For Tax Lots 600 and 900, a deed describing the tax lots from 1941 (Volume 255, Page 680) matches the current deed's (Reel 3219, Page 400) property description. Additionally, the current property description of Tax Lot 800 (Reel 1949, Page 87) matches the property description from a deed from 1943 (Volume 291, Page 18). Therefore, both parcels are legal for land use purposes.
3. Adjacent properties in all directions are zoned EFU (Exclusive Farm Use) and in a mix of small to large scale commercial farm use.
4. Soil Survey for Marion County, Oregon, indicates approximately 100.0% of the soils on the subject tax lots are classified as high value.
5. The applicants are proposing to adjust the property lines on a 78.9-acre parcel and a 39.65-acre parcel to create a 35.38-acre parcel and an 83.17-acre parcel.
6. Marion County Surveyor's Office commented:

No survey required on the parcel that is over 10 acres.

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)]

Marion County Assessor's Office submitted a comment about one of the subject parcels tax status; see file for comment.

7. 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.
8. 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.*

There are three tax lots as two separate parcels which are part of the proposed property line adjustment. These tax lots include 600, 800, and 900. Tax Lots 600 and 900 are part of the same parcel. Together, Tax Lots 600 and 900, comprising of the same parcel, are a total of 78.9 acres. Tax Lot 800 is 39.65 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.*

Tax Lots 600 and 900 are currently 78.9 acres and is proposed to decrease to 35.38 acres. Tax Lot 800 is currently 39.65 acres in size and will increase to 83.17 acres in size. Both parcels are below the minimum lot size with Tax Lot 800 to increase in size after the proposed adjustment to above the minimum lot size. 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.*

Regarding farming activities, both parcels are currently being farmed. The applicant is proposing to adjust the property lines between Tax Lots 600 and 900 and 800. Tax Lot 600 has an established dwelling with the remainder of the parcel, Tax Lot 900, in farming use. The resulting property line adjustment would combine Tax Lots 800 and 900 to create a parcel exclusively used for farming. This configuration would make each resulting parcel more suitable for farming. Therefore, 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.*

Both parcels are below the minimum lot size of the EFU Zoning, which is 80 acres. Specifically, Tax Lots 600 and 900 are 78.9 acres and Tax Lot 800 is 39.65 acres. Tax Lot 600 contains a dwelling but is already below the minimum lot size for this zoning when combined with Tax Lot 900 to make one parcel. After the property lines have been adjusted, Tax Lot 600 would be below the minimum lot size while a combined parcel of Tax Lots 800 and 900 would be above the minimum lot size at 83.17 acres.

For this application, the applicant is not proposing to build any additional dwellings on either parcel or adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver. Additionally, the resulting parcel of Tax Lots 800 and 900 cannot be used to qualify for a dwelling; this will be made a condition of approval. Therefore, 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.*
 - 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. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1330 § 4 (Exh. A), 2013; Ord. 1326 § 4 (Exh. A), 2012; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.090.]*

The applicant has stated that the existing dwelling on Tax Lot 600 will not be located on a different parcel after the proposed property line adjustment is complete. Additionally, the applicant is not proposing to build another dwelling on the resulting parcel. The criterion is met.

9. 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.
10. 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.
11. 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: October 11, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173

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.