

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. 22-050

APPLICATION: Application of Pratum Co-Op and Herr Family LLC for a property line adjustment to adjust the property lines on a 14.69-acre parcel and a 4.69-acre parcel to create a 6.69 acre parcel and a 12.9 acre parcel in a in EFU (Exclusive Farm Use) zone located at 2892 Howell Prairie Rd NE, Salem (T7S; R2W; Section 13; Tax lots 500 & 600).

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 **January 27, 2025**. 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. Resultant property of 6.69 acres must be surveyed per ORS 92.060 (7) and the survey submitted for review.
2. 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)].
3. 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:

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 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 **January 27, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 28, 2023**, 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 500 and 600. Tax Lot 600 is the southern parcel with Tax Lot 500 being the northern parcel. Tax Lots 500 and 600 are located on Howell Prairie Road NE and located approximately 0.25 miles from the intersection of Howell Prairie Road NE and Kaufman Road NE. Tax Lot 500 has no dwellings and contains no buildings. Tax Lot 600 contains no dwellings but does contain one farm building and one other associated building. Tax Lots 500 and 600 have been the subject of any previous land use cases. Specifically, Tax Lot 500 was the subject of previous land use case Conditional Use/Partition 05-008, which was approved. Tax Lot 600 has been the subject of two previous land use cases, Administrative Review 05-039, and Conditional Use 08-038, both of which were approved. For Tax Lot 500, the deed from Conditional Use/Partition 05-008 (Reel: 1668, Page: 353) matches the deed that was submitted. Additionally, the current property description of Tax Lot 600 (Reel 3631, Page 201) matches the property description from a Property Line Adjustment Deed that was recorded on May 18, 2010. 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 99.4% 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 14.69-acre parcel and a 4.69-acre parcel to create a 6.69-acre parcel and a 12.9-acre parcel.
6. The below comments were received by staff regarding this land use case:

Marion County Surveyor's Office commented:

No survey required. The resultant property of 12.90 acres is greater than ten acres.

Resultant property of 6.69 acres 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. 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 Building Inspection Division commented:

No Building Inspection concerns with proposed property line adjustment. Future development and/or utilities on private property would require permits be issued prior to construction and/or installation.

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 two tax lots as two separate parcels which are part of the proposed property line adjustment. These tax lots include 500 and 600. Tax Lot 500 is a total of 4.69 acres. Tax Lot 600 is 14.69 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 500 is currently 4.69 acres and is proposed to increase to 12.9 acres. Tax Lot 600 is currently 14.69 acres in size and will decrease to 6.69 acres in size. Both parcels are below the minimum lot size with neither tax lot increasing 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, Tax Lot 500 is being used as commercial in conjunction with farm use while Tax Lot 600 is being farmed. The applicant is proposing to adjust the property lines between Tax Lots 500 and 600. Neither parcel contains an established dwelling. The resulting property line adjustment would result in both parcels still being used for farming activities. This configuration would make each resulting parcel at least as suitable for farming as before the proposed property line adjustment. 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 Lot 500 is 14.69 acres and Tax Lot 600 is 4.69 acres. Neither tax lot contains a dwelling. For this application, the applicant is not proposing to build any dwellings on either parcel or adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver. 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 neither parcel contains a dwelling on it. Additionally, the applicant is not proposing to build a dwelling on the resulting parcels. 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: January 12, 2023

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.