

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. 24-017**

APPLICATION: Application of the Leo S Meysing Trust for a property line adjustment to adjust the property lines on a 74-acre parcel, a 145-acre parcel and an 1-acre parcel to create a 123-acre parcel, a 87-acre parcel and a 10-acre parcel in an EFU (Exclusive Farm Use) zone located at: 1491 Matheny Rd NE, Gervais (T5S; R3W; Section 35; Tax lot 100, 300 & 500).

DECISION: The Planning Director for Marion County has **DENIED** the above-listed Property Line Adjustment application subject to certain conditions.

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 **September 14, 2024**. 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, 2024**, unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which 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 agricultural operations.
2. The subject parcel is located at 1491 Matheny Rd NE. The subject parcel consists of three tax lots that are used together in a farm operation for grass seed and Christmas trees. There is a 1945 dwelling located on tax lot 500 with some accessory structures. Matheny Rd NE crosses through tax lot 500. These tax lots reach the bank the Willamette River to the north, and are bordered by a slough on the northwestern property line. The entire parcel is within the floodplain of the Willamette River. Tax lot 500 has an equal amount of 500-year floodplain, 100-year floodplain, and floodway. Tax lot 100 is predominantly made up of floodway with some area in the 500-year floodplain and 100-year floodplain. Tax lot 300 has a mix of 500-year and 100-year with no floodway. There are wetlands present in the middle of the farming operation, on the eastern side, the southwestern side, and on the western edge.
3. Neither the applicant nor Marion County Planning Department could find any deeds that describe subject tax lot 100 or 500. The applicant submitted a 1936 deed (Vol: 225 Page: 640) that describes the parent parcel of tax lot 100, but was unable to find a description of the property that matches the tax lot. This 1936 deed describes a 130-acre parcel that includes the current 70-acre tax lot. Tax lot 300 was described by a deed in 1973 (Volume: 761 Page: 258) transferring the property from the Weathers to the Everitts. One month later a deed (Volume: 761 Page: 259/260) describes as a single parcel the land comprised of the subject tax lots 100, 300, and 500.

The lack of previous deeds describing tax lots 100 or 500 indicates that this land did not exist independently prior to being combined. If it had, and if the owners intended on transferring three parcels, the deed would have listed out parcel 1, parcel, 2 & parcel 3 with the individual descriptions, or included the individual descriptions divided

by phrasing to indicate independence such as “and also”. Prior to land use planning ordinances, it was common to combine parcels with language such as “together with” added between descriptions of two previously discrete deeds. The new description indicates two things; first is that discrete descriptions of tax lot 100 and 500 did not exist which required a new description to be written, and second that the intention of the landowner was to combine their land to create a single parcel. As per MCC 17.110.427, a parcel is a unit of land created by partition under applicable zoning code, 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.” When the new description of meets and bounds was written in 1973, the subject parcel was created. The deed with this description combined and transferred the property from the Everitts to the Davis Street Investment Company, a partnership of A. E. Petroff and Leo S Meysing. The property has remained in this description since 1973 and is therefore a single legal parcel. Because these tax lots comprise a single legal parcel, no property line adjustment amongst them is possible.

4. Adjacent properties are zoned EFU and all are in use for commercial agriculture and farm dwellings except for the parcel directly west of the subject parcel that is in use for aggregate extraction.
5. Soil Survey for Marion County, Oregon shows that Tax lot 100 has 89.4% high value soils, tax lot 300 has 100% high value soils, and tax lot 500 has 89.8% high value soils.
6. The applicants are proposing to adjust the property lines on a 140.57-acre tax lot, a 69.85-acre tax lot, and a 1.03-acre tax lot to create an 87-acre parcel, a 123-acre parcel, and a 10-acre parcel. The adjusted property lines would isolate the existing dwelling on its own lot and move the property line between the agricultural fields to follow Matheny Rd. The proposal is not possible because the tax lots are parts of a single parcel of land.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor’s Office commented:

- No survey required for properties greater than ten acres per ORS 92.060 (8).
- Properties 10 acres or less 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).

Marion County Building Inspection commented: No Building Inspection concerns. Permit(s) are required to be obtained prior to any development and/or utilities installation on private property.

Marion County Assessor’s Office provided tax related information that is included in the case file.

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:
 - (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 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.*

The minimum parcel size as determined through the process described in 17.136.090 (A) is 200-acres. The subject property is 220-acres. A property line adjustment is not applicable to a single parcel. There is one parcel above 200-acres currently, and the proposed property line would result in two parcels being below 200-acres which would require a Partition with a Variance to the minimum parcel size. The applicant representative has been advised that a Partition with a Variance could potentially create two parcels that are at least as suitable for commercial agriculture as the current configuration. The proposed Property Line Adjustment is not feasible, therefore the criteria are not met.

9. Marion County Code 17.110.427 Parcel.
“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.

The subject parcel was created by deed in 1973 recorded in the Marion County Book of Land Records (Volume: 761 Page: 259/260). This deed describes the approximately 220-acre parcel as a single parcel of land. The subject parcel has remained in this configuration since then.

10. Based on the above findings, the applicants’ proposal does not meet the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **DENIED**.

Brandon Reich
 Planning Director/Zoning Administrator

Date: August 29, 2024

If you have any questions regarding this decision contact John Speckman 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.