

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 ADMINISTRATIVE REVIEW CASE NO. 24-008**

**APPLICATION:** Application of the George R. Duda & Joan K. Duda Trust for an administrative review to place a dwelling on a 5.9-acre parcel in a UT-5 (Urban Transition) zone located in the 14000 block of Evans Valley Rd NE, Silverton (T6S; R1W; Section 35D; Tax lot 102).

**DECISION:** The Planning Director for Marion County has **DENIED** the above-described Administrative Review.

**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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **May 7, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 8, 2024**, unless appealed.

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

1. The subject property is designated Single Family Residential in the City of Silverton Comprehensive Plan and correspondingly zoned UT-5 (Urban Transition 5-Acre Minimum). The primary intent of both the Plan designation and the zone is to retain and protect properties that will be needed to accommodate future urban residential development. The UT zoning is reflective of the fact the property is not served by urban facilities.
2. The subject property is located in the 14000 block of Evans Valley Rd NE. The parcel is vacant and mostly flat. Some of the southern portion is in use for residential accessory purposes, like parking, by the parcel under the same ownership addressed 14477 Evans Valley Rd NE which contains a dwelling. The subject parcel is specially assessed for farm use and appears to be planted with grass seed or a cover crop.

The subject parcel was created by partition in 1999 and is therefore considered a legal lot for land use purposes. The partition case (P99-020) included an adjustment proposal to allow a dwelling to be constructed on the subject parcel. This adjustment was denied.

3. The subject parcel is within the City of Silverton UGB and not yet annexed. The surrounding uses are primarily residential with small farms to the west and south. The largest nearby farm is to the west of the subject parcel. North of this farm is a single-family residential neighborhood. Adjacent to the north of the subject parcel is a single-family residential neighborhood.
4. The applicants are proposing to place a single-family dwelling on the subject parcel.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

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

### **ENGINEERING REQUIREMENTS**

- A. An Access Permit will be required upon application for building permits.
- B. The subject property will be assessed Transportation System Development Charges (TSDCs) and Parks fee upon application for building permits.

- C. Utility service extensions in the public right-of-way generally require a permit from PW Engineering for each service.

Marion County Septic commented: “A site evaluation is required prior to a septic installation permit on this property. Please note that the system for 14477 Evans Valley is located on the property with tax lot 061W35D000100 and a septic easement is required.”

Marion County Building Inspection commented: “No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property.”

The Silverton Fire District commented: “The new dwelling will need to meet Oregon Fire Code as it relates to access and water supply. If the conditions cannot be met, the building official, in accordance with OAR 918-480-0125, will need to apply Uniform Alternative Construction Standards (UACS) to the new dwelling.”

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

6. The applicant’s proposal hinges on the same code referenced in the denial of the Adjustment proposal in the 1999 case P99-020.

*16.13.320 Development limitations and requirements.*

*C. Residential Density. On lots designated for residential development, no more than one dwelling unit or mobile home shall be allowed per five acres unless a numerical suffix is added to the zone altering the allowable density to no more than one dwelling unit or mobile home per one, three, 10 or 20 acres. The number of dwellings allowed shall be based on the size of the lot at the time the UT zone first applied to the property.*

When the UT-5 zone was applied to this property it was approximately 7.1-acres (erroneously referred to as 7.68 in P99-020). The property was therefore allowed one dwelling, which exists and is addressed 14477 Evans Valley Rd NE. The 1999 partition did not create a buildable lot because the limitation is based on when the zone was applied, not when a lot is created. As Marion County determined in the 1999 decision, the subject parcel does not qualify for development of a dwelling until such time as it is annexed into the City of Silverton.

The applicant provided documentation that based on the existing inventory of developable lots within the City of Silverton, annexation will not be necessary for 8-10 years. The applicant also disagrees with Marion County Planning Staff’s assertion in 1999 that construction of an additional dwelling would interfere with the transition of the property into the City of Silverton. These details, while interesting, do not have any bearing on the important criteria within MCC 16.13.320(C).

The partition that created the subject parcel did not create a buildable parcel because the density limitation is based on when the zone was first applied to the property. The density limitation has been realized and the subject parcel does not qualify for a dwelling.

7. Based on the above findings, it has been determined that the request does not satisfy all applicable criteria and is, therefore, **DENIED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: April 23, 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.