

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 PARTITION/VARIANCE CASE NO. 24-015**

**APPLICATION:** Application of the Ashley Zuidema Trust to partition a 161.12-acre parcel into two parcels consisting of 80 acres and 81.12-acres and a variance to the minimum parcel size in an EFU (Exclusive Farm Use) zone located at 14655 Libby Lane SE, Jefferson (T9S; R2W; Section 1031; Tax lots 1100).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Partition application subject to certain conditions.

**EXPIRATION DATE:** This approval is valid only when the final partition plat is recorded by **December 23<sup>rd</sup>, 2026**. 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 division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposed use the applicant should contact 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:

**Prior to recording the final plat:**

1. Per ORS 92.055 – Parcels outside an urban growth boundary and greater than 10 acres can be un-surveyed.
2. Per ORS 92.050, plat must be submitted for review. Checking fee and recording fees required. A title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.
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.
4. 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 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 restrictions or conditions. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).

**APPEAL PROCEDURE:** The Marion 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, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **December 23rd, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 24<sup>th</sup>, 2024**, unless further consideration is requested.

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

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to provide areas for continued practice of commercial agriculture.
2. The subject parcel is located on the northern terminus of Libby Ln SE, roughly 1-mile west of the community of Marion, and 1.5-miles northeast of the city of Jefferson. The property contains a homesite, accessory structures, basketball court, trucking business with associated commercial structures, 100-acres of land in agricultural use for grass seed/hay, and 62-acres of sloping land on the northern portion of the parcel with oak savannah in the northwestern corner and evergreen woodlands in the northeastern corner.

The configuration of the subject parcel was last modified in 1986. A sheriff's deed recorded on June 20<sup>th</sup>, 1986, references a 1985 foreclosure on a homesite that includes land that was formerly part of the subject parcel. That deed (Reel: 470, Page: 154) describes approximately 10-acres of land that is now comprised of the tax lots 1200 & 1300 which are southeast adjacent to the subject parcel. A letter of determination dated January 22, 1979, to the previous owner of the subject parcel explains that a property line adjustment would be possible between a 1-acre parcel, and the 171-acre parcel to increase the size of the 1-acre parcel to 10-acres. A site plan submitted with the letter requesting determination shows the 1-acre parcel which is now tax lot 1300, increasing to include the land which is now tax lot 1200. A deed description of this area recorded three days prior to the letter being written (January 19, 1979) was also submitted to the county. After September 1, 1977, all property line adjustments and partitions are required to receive planning approval. Prior to this date they could be performed by deed. Between this letter, and the foreclosure, staff could find no property line adjustment explaining how the homesite at 14805 came to be 10-acres. The letter described the property line adjustment as "appropriate" but is not in and of itself and approval of the adjustment. Regardless, the sheriff's deed legalized tax lot 1200 & 1300 as a single legal parcel, transferring the land within tax lot 1200 that was previously part of the subject parcel. A previous description of the subject parcel that includes tax lot 1200 & 1300 can be found in Reel 19 Page 939, in an oil and gas lease agreement. After the sheriff's foreclosure, the subject parcel's deed was eventually updated, and the current deed (Instrument number: 2024-04640) accurately describes the parcel. A sheriff's deed is exempt from the partitioning requirements in the Marion County Zoning Code, and the subject parcel has remained in its current configuration since the time of that deed modifying the parcel. The parcel is therefore legal for land use purposes.

3. Surrounding uses are agricultural to the east and south stretching to the Santiam River. This area is characterized by large farm tracts in production with hay and grass seed. The parcels north and west adjacent to the subject parcel are large SA (Special Agriculture) zoned parcels with oak savannah and mixed natural forest. This forested area continues north to a rural residential area south of Valley View Rd SE, and is bordered on the west by Parrish Gap Rd SE. West of Parrish gap road are large farm tracts in agricultural use.
4. Marion County Soils Analysis indicated that 60.6% of the subject property is high value farm soils.
5. The applicant proposes to partition a 161.12-acre parcel into two parcels consisting of 80 and 81.12-acres with a variance to the minimum parcel size calculated as 90-acres.
6. Marion County Surveyor commented:
  1. Per ORS 92.055 – Parcels over 10 acres can be un-surveyed.
  2. Per ORS 92.050, plat must be submitted for review.
  3. Checking fee and recording fees required.

4. A title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

Marion County Septic commented: "A 10' setback from the proposed property line and existing drainlines must be met per OAR 340-071-0220."

Marion County Building Department commented: "New property lines are recommended to be established at least 3 feet from any existing residential structure exterior wall or at least 10 feet from any existing commercial structure exterior wall. If any less than these dimensions, additional fire resistive materials may be required to be installed on the exterior walls to increase fire resistance. Permit(s) would be required to be obtained prior to this work and any other proposed structures and/or utilities installation on private property."

Marion County Tax Assessor provided comments related to the subject property's property taxes.

All other contacted agencies either declined to comment or stated no objection to proposal.

7. The following regulations in MCC 17.176.090 apply when property line adjustments and partitioning of land within an EFU zone subject to the provisions of MCC 17.172 are proposed:

A. *Minimum Parcel Size for Newly Created Parcels:*

1. *Farm Parcels. The minimal parcel size for new farm parcels shall be calculated as follows:*
  - a. *All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*
  - b. *The average (mean) size of all parcels larger than 40 acres identified in subsection (A)(1)(a) of this section shall be determined.*
  - c. *The acreage size calculated in subsection (A)(1)(b) of this section, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

The applicant identified all surrounding parcels within 500 feet and calculated the mean size of those parcels larger than 40-acres. The mean is 91.3-acres. Rounded to the nearest to acres yields a mean of 90-acres. The applicant is requesting a variance to reduce the calculated minimum acreage down to the state minimum of 80-acres.

B. *Requirements for Creation of New Non-Farm Parcels.*

The applicant is proposing to create two farm parcels, the use will not change. The criterion does not apply.

8. The criteria for granting a variance are contained within MCC 17.122.020 (A), they are as follows:

1. *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

Adhering to the calculated minimum parcel size in MCC 17.136.090(A) would not allow the subject parcel to be divided. The minimum parcel size in this case is 10 acres larger than the state minimum. This is a practical difficulty which can only be relieved by modifying the minimum parcel size down to the state average. The criterion is met.

2. *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*

The parcel is naturally divided by the northern hillsides into an approximately 63-acre area of sloping terrain and scrub, and an approximately 98-acre area of relatively flat land in agricultural use where grass seed is being produced. The hilly scrub area contains the homesite, accessory structures, and an agricultural trucking business established by Conditional Use permit CU12-031. The property owners live on site and operate the agricultural trucking business, but lease the farmlands. The goal of this partition is to sell the land to the farmer leasing the

land. It is uncommon in Marion County for land to contain a homesite, trucking business, and farmland. The subject parcel is 60% high value farm soils, and the partition will isolate the lower value soils in the hills associated with the homesite and trucking business. The remaining high value soils on the proposed northern parcel will be available for agricultural use on lease. The proposed southern parcel will entirely consist of class 2 and 3 high value soils. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

This degree of variance is the minimum to meet the minimum parcel size in the EFU zone. Because the subject parcel is 161.12-acres, a partition is only possible by utilizing the state minimum of 80-acres rather than the calculated minimum of 90-acres as per MCC 17.136.090(A). The criterion is met.

4. *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

While the variance would allow properties to be under the mean lot size in the area, the commercial practice of agriculture is not proposed to be stopped and the parcels will continue to be farmed. The criterion is met.

5. *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

This variance will not adversely affect the health of persons in the area as it does not change the uses of the land or create new circumstances for adjacent owners. The criterion is met.

6. *The variance will maintain the intent and purpose of the provision being varied.*

The intent and purpose of the provision in MCC 17.136.090(A) is to maintain large parcels in resource zones that are most valuable to commercial agricultural operations. Utilizing the average size of parcels in the area assures regions of the Marion County with large parcels in resource use remain protected from parcelization and available for large scale farming operations. In this situation, the average size is influenced by parcels that are not in agricultural use, and have relatively low amounts of high value soils. The north adjacent parcel is 102-acres with 3% high value soil, and the east adjacent parcel is 162.59-acres with 25.5% high value soils. Both parcels are in the SA (Special Agriculture) zone and contain homesites, and natural woodlands consisting mostly of oak savannah bordered by a mix of deciduous and evergreen such as pine and douglas fir. The larger of the two parcels contains approximately 10-acres of planted timber. The natural forest across these two large parcels extends onto the northern section of the subject parcel.

The area of the subject parcel in agricultural use is approximately 100-acres. The partition will result in two farm parcels, one with 81-acres of active farmland, one with 20-acres of active farmland and another 20 of high-value soils not currently in use. The land to the east and south of the subject parcel is primarily in agricultural use in a range of parcel and tract sizes from 40 to 200-acres, with scattered smaller parcels in use for rural residential and hobby farms. In keeping with the average size of these parcels to the east and south of the subject parcel, the state minimum of 80-acres maintains the general pattern of farm parcel sizes in this area. This variance therefore maintains the intent of the provision being varied. The criterion is met.

9. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED.**

Brandon Reich  
Planning Director/Zoning Administrator

Date: December 6<sup>th</sup>, 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.