

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. PLA20-021**

**APPLICATION:** Application of Troy & Heidi Eberle to adjust the property lines on a 1.51 acre property and a 3.73 acre property to create a 2.12 acre property and a 3.12 acre property in an Exclusive Farm Use (EFU) and Farm/Timber (FT) zone located at 16425 Mustang Lane and 3065 Seminole Road, Silverton. (T7S, R1E, Section 7D, Tax lots 1202 and 1400).

**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 **July 16, 2022** (two years). 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 drainfield 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. A property line adjustment deed for the area being transferred shall be recorded with the Marion County Clerk's Office, prior to the recording of the re-plat. Deed recording reference numbers shall be noted on the plat. As 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. **This property line adjustment is not complete until the title transfer instruments accomplishing the property adjustments are recorded by the applicants with the Marion County Clerk.**
2. The applicant shall have the parcels re-platted per ORS 92.185(6) and ORS 92.050. The re-plat shall be filed with the Marion County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment/Adjustment Case 20-017. (Final Plat Instructions enclosed).
3. Property line adjustment deeds shall be recorded with the Marion County clerk's office prior to submitting the property line adjustment survey. Deed recording reference numbers shall be noted on the required survey.
4. Prior to recording the deeds, the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
5. 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.
6. The Measure 49 dwelling approved by state order number E129825 must be placed entirely on the original 1.51 acres, created as Parcel 2 of Partition Plat 2011-20.

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

7. 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 findings below be contacted to identify restrictions or necessary permits.

8. Prior to recording the deed all taxes due must be paid to the Marion County Assessor Tax Section (contact them at (503) 588-5215 for verification of payments).

**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 to 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 **July 16, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 17, 2020** 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 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 properties are located east of Seminole Road. The larger property identified as tax lot 1202 is undeveloped with an accessory structure and described in deeds going at least as far back as July 19, 1976 and was subject of Measure 49 Final Order E130893 and is considered a legal lot for land use purposes and is considered a legal lot for land use purposes. The smaller property contains no structures and has been described in deeds dated back to July 31, 1980.
3. Adjacent properties to the north are developed with single family homes, which include wells and septic. The parcels to the south and west are undeveloped farm/forest properties.
4. Soil Survey for Marion County, Oregon, indicates approximately 81.4% 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 1.51 acre parcel and a 3.73 acre parcel to create a 2.12 acre parcel and a 3.12 acre parcel.
6. Marion County Surveyor's Office commented:

A re-plat (in the form of a partition plat) is required, due to the adjustment of a partition plat parcel line or subdivision lot line. A property line adjustment deed for the area being transferred shall be recorded with the Marion County Clerk's Office, prior to the recording of the re-plat. Deed recording reference numbers shall be noted on the plat. As 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. The deeds conveying the re-platted parcels shall be recorded after the recording of the re-plat.

Marion County Assessor's Office provided information regarding taxes on the subject properties.

Marion County Building Inspection commented that a Site Evaluation will be required for Parcel 1 septic.

Various agencies were contacted about the proposal and given an opportunity to comment. All contacted agencies either failed to comment or stated no objection to the proposal.

7. 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 parcels subject to a proposed lot line adjustment are larger than the minimum parcel size pursuant to MCC136.090(A)(1), the same number of parcels shall be as large or larger than the minimum parcel size after the adjustment. When all parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no parcel shall be reduced below the applicable minimum parcel size.*
- (b) *If the minimum parcel size in MCC136.090(A)(1), is larger than 80 acres, and a parcel subject to lot line adjustment is smaller than the minimum parcel size but larger than 80 acres, the parcel shall not be reduced in size through lot line adjustment to less than 80 acres.*
- (c) *Any lot line adjustment shall result in a configuration of parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*
- (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 the 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.*

8. The existing parcels are all less than 80 acres in size prior to the adjustment; therefore the criteria in 7 (a) and (b) do not apply. The reconfiguration will only add land to the westerly parcel to assist in the construction of a future home, the remaining farmed parcel will not be affected. The criteria in 7 (c) is met. Tax lot 1202 already contains a structure and will remain under the minimum lot size. Tax lot 1400 was and will remain under the minimum lot size after reconfiguration and does not contain a structure, criteria 7 (d) 1, 2, 3 do not apply. No dwelling are proposed to be relocated on a different parcel; therefore the criteria in 7 (e) do not apply.
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.  
  
The Marion County Surveyor commented that a survey is required; therefore, this will be made a condition of approval.
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 an EFU zone. The property line adjustment request is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Planning Director

Date: July 1, 2020

If you have any questions regarding this decision contact Lindsey King 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.