

**NOTICE OF DECISION
PROPERTY LINE ADJUSTMENT CASE NO. 18-033**

APPLICATION: Application of Thomas and Alicia McGarvey and Eldon and Jeannette Smith to adjust the property lines on a 10.87 acre parcel and an 18.72 acre parcel to create an 11.16 acre parcel and an 18.38 acre parcel in a TC (Timber Conservation) zone located at 372 and 393 Phelps Mountain Lane SE, Silverton. (T7S; R1E; Section 36; tax lots 600 and 800).

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 **November 22, 2020**. 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 proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. 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:

1. **Property line adjustment deeds shall be recorded with the Marion County Clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **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. Deed recording reference numbers shall be noted on the required survey.
3. **Prior to recording the deeds or filing the plat,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
4. 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.

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

5. 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 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 agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits.

6. Prior to recording the deeds 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).

- The applicants should contact the Drakes Crossing Fire District to obtain a copy of the District’s Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

APPEAL PROCEDURE: The Marion County Zone Code provide 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 Road NE, Salem, by 5:00 p.m. on

November 22, 2018. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or the office. This decision is effective **November 23, 2018** unless further consideration is requested.

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

- The subject property is designated Forest in the Marion County Comprehensive Plan. The intent of this designation and corresponding TC (Timber Conservation) zone is to promote continuation of resource uses in the area.
- The subject property is located on Phelps Mountain Lane SE, a Forest Service road that extends approximately 2 miles east to the dwelling site from a point in the 20,300 block of Bridge Creek Road SE. The parcels were created as a result of Property Line Adjustment Case #16-036.
- Adjacent properties are zoned TC and consist primarily of properties in timber production.
- Oregon Department of Agriculture classifications indicate the property is composed of the following soils and timber yield production capabilities:

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
Tax lot 600			
McCully	2.8	171	479
Kinny Cobbly Loam	16.0	182	2,912
		Total	3,391
Tax lot 800			
McCully	7.3	171	1,248
Kinny Cobbly Loam	3.4	182	619
		Total	1,847

- The applicants are proposing to adjust the property lines on a 10.87 acre parcel and an 18.72 acre parcel to create an 11.16 acre parcel and an 18.38 acre parcel.
- Marion County Surveyor’s Office commented: “No survey required. The resultant properties are greater than ten acres. Property line adjustment deed shall be recorded with the county clerk. Marion County Planning requires perimeter descriptions of the resultant properties. 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.”

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

- The criteria for approving a property line adjustment in the TC zone are found in Marion County Code 17.138.080:

- Parcels larger than 80 acres may not be reduced to below 80 acres.*

Both properties are smaller than 80 acres and both parcels will still be smaller than 80 acres after the property line adjustment is finished. This criterion does not apply.

2. *Parcels smaller than 80 acres may be reduced or enlarged provided:*
- a. *If the tract does not include a dwelling and does not qualify for a dwelling under MCC 17.138.030(A) or (B), any reconfiguration after November 4, 1993, cannot in any way enable the lot or parcel to meet the criteria for a new dwelling under MCC 17.138.030(A) or (B).*

Both parcels contain dwellings. The property line adjustment would not allow a property in the tract to qualify for a dwelling where it could not before. This criterion is met.

- b. *Except as provided in subsection (B)(2)(c) of this section, a lot or parcel that is reduced will be better suited for management as part of a commercial forest; and if capable of producing 5,000 cubic feet per year of commercial tree species will not be reconfigured so that the cubic feet per year capability of the lot or parcel is reduced.*

While the properties are being changed in size, they are both too small to be considered capable of commercial timber production. Properties similarly sized to the original parcels would result from the property line adjustment. This criterion is met.

- c. *A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:*
 - i. *Was approved as a non-farm or non-forest parcel; or*
 - ii. *Is occupied by an approved non-farm or non-forest dwelling; or*
 - iii. *More than half of the parcel is occupied by a use in MCC 17.138.020 or 17.138.040 other than a dwelling or farm or forest use; or*
 - iv. *The lot or parcel is occupied by a dwelling established before January 1, 1994, and is not capable of producing 5,000 cubic feet per year of commercial tree species (see MCC 17.138.120(B) for definitions).*

The parcels are not being reduced to the minimum size necessary for the development on the property. This criterion does not apply.

- d. *A property line adjustment may not be used to:*
 - i. *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;*
 - ii. *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*
 - iii. *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.*

Each parcel contains a dwelling. The change in the size of the property would not allow a property to qualify for a dwelling where it did not qualify before. This criterion is met.

8. Based on the above findings, the proposal meets the applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: November 7, 2018

If you have any questions regarding this decision contact Patty Dorr 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.