

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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. 18-034**

**APPLICATION:** Application of Richard and Susan Whitesell and Mark Adams to adjust the property lines on a 0.43 acre parcel in an AR (Acreage Residential) zone and a 17.32 acre parcel in a TC (Timber Conservation) zone to create a 0.79 acre parcel and a 16.96 acre parcel on property located at 8320 Elkhorn Drive SE and 35403 Francis Street SE, Lyons. (T8S; R4E; Section 32BD; tax lots 100, 101, and 700).

**DECISION:** Notice is hereby given that the Planning Director for Marion County has **APPROVED** the above-described 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 **December 3, 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 request 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 proposal 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. The applicants shall have the 0.79 acre parcel surveyed per ORS 92.060 (7). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment Case 18-034. (Final Plat Instructions enclosed).
4. **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.
5. 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:

6. After the property line adjustment has been completed, no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
7. No dwellings are permitted on the TC zoned portion of the 0.79 acre parcel.

**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 Finding #5 be contacted to identify restrictions or necessary permits.

**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 (Appeal 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 **December 3, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 4, 2018** unless further consideration is requested.

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

1. The larger subject property is designated Timber in the Marion County Comprehensive Plan and zoned TC (Timber Conservation). The purpose of the TC zone is to maintain properties for timber use.
2. The properties are located on the north side of Francis Way and the east side of Elkhorn Drive. The 17.32 acre parcel identified as tax lots 100 and 101 contains an existing dwelling, accessory structures, well and septic system. The property was subject of Conditional Use Case CU98-1, which permitted the existing dwelling, and is considered a legal parcel for land use purposes. The 0.43 acre parcel identified as tax lot 700 is undeveloped. The property is part of Randall's Elkhorn Subdivision No. 2, and is considered a legally created parcel for land use purposes.
3. Adjacent properties to the north and east of the larger lot are zoned TC and in timber use. Surrounding properties to the south, east and west are zoned AR and consist of small parcels in rural residential use.
4. The applicants are proposing to adjust the property lines on a 0.43 acre parcel in an AR (Acreage Residential) zone and a 17.32 acre parcel in a TC (Timber Conservation) zone to create a 0.79 acre parcel and a 16.96 acre parcel.
5. Marion County Surveyors Office commented: "No survey required on the 16.96 acre parcel. The 0.79 acre parcel must be surveyed per ORS 92.060(7) and the survey submitted for review. A survey checking fee must be paid at the time of review. 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 Building Inspection Onsite Wastewater Specialist commented that a record review is required for tax lot 700.

Marion County Tax Office provided information regarding taxes on the subject properties.

6. The criteria for reviewing property line adjustments within a TC zone are listed in Section 17.139.080(B) of the Marion County Code (MCC). These criteria are as follows:

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

Both parcels are less than 80 acres in size. This criterion does not apply.

*B. Parcels smaller than 80 acres may be reduced or enlarged provided:*

- 1. 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).*
- 2. 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.*
- 3. A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:*
- 4. Was approved as a non-farm or non-forest parcel; or*
- 5. Is occupied by an approved non-farm or non-forest dwelling; or*
- 6. 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*
- 7. 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 definition).*

*C. 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;*
- 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; or*
- 4. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.*

7. The existing parcels are less than 80 acres in size prior to the adjustment; the criterion in #6(A) does not apply. The applicants are proposing to adjust property lines to add a portion of the larger lot that was on a long term lease as a buffer between residential and timber activities. It appears that the proposal would not change the use or management of the parcels for the property owner. The TC zoned property contains a home site established in 1998 as a template dwelling as a result of approval of CU98-1 and is capable of producing less than 3,500 cubic feet per year of commercial tree species. The larger parcel contains a dwelling prior to the adjustment. The smaller parcel is zoned for rural residential use and a dwelling is permitted on a lot in the AR zone. The criteria in #6(B) and (C) are met.

8. 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.

9. Based on the above findings and conclusions, the proposal meets the criteria for a property line adjustment in an TC zone and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: November 16, 2018

If you have any questions please contact Lisa Milliman 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.