

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/PROPERTY LINE ADJUSTMENT CASE NO. 24-001

APPLICATION: Application of W N Johnson Properties LLC for an administrative review to replace a dwelling on a proposed adjusted 2.47-acre parcel (Tax Lot 700 of Section 25) and to adjust the property lines on a 0.17, 40.87, 63.16, 5.00, 14.86, and 28.59-acre parcel to create a 1.81, 3.41, 2.47, 2.91, and a 143.15-acre parcel in an EFU (Exclusive Farm Use) zone located at 8952 Santiam Loop SE, Aumsville (T9S; R2W; Section 24C; Tax lot 700; Section 25; Tax Lot 500, 700, 800, 900, 1000).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review & Property Line Adjustment, subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **March 2, 2026**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

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:

1. The applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
3. Property line adjustment deeds shall be recorded with the county clerk meeting requirements identified in ORS 92.190(4).
3. The applicants shall have parcels of 10 acres or less surveyed per ORS 92.060 (7). No survey is required for abutting properties greater than ten acres per ORS 92.060(8). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Administrative Review/Property Line Adjustment Case 24-001 (or AR/PLA24-001).
4. All surveys shall be submitted for review by the Marion County Surveyor, and checking fees will be required at the time of review.
5. The applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
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.

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 thereon. It is recommended that the agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. 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).
8. The applicants should contact the Stayton 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.
9. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

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 **March 4, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 5, 2024**, unless appealed.

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

1. The subject properties are designated EFU (Exclusive Farm Use) in the Marion County Comprehensive Plan and correspondingly zoned EFU. The purpose of this zone is to provide areas for continued practice of commercial agriculture.
2. The subject properties are located at 8758, 8952, & 8982 Stayton Rd SE, as well as 9060 Santiam Loop SE, Stayton, Oregon. The subject parcel located in Section 24C designated as Tax lot 700, as well as the subject parcel in Section 25 designated as Tax lot 800 do not have addresses. The majority of these six parcels are in use together as a large blueberry farm. Together they currently have a total of three dwellings between them, each on separate parcels, as well as accessory farm structures. The southern half of this tract is within the 100-year floodplain the Santiam River.

Tax lots 500, 700, and 900 of Section 25 have all been the subjects of prior land use cases (AR07-021 and PLA22-025). Tax lots 800 and 1000 of Section 25, along with Tax lot 700 of Section 24C have all existed in their current configurations since before September 1st, 1977. Therefore, all six parcels are considered legal for land use purposes. Information about deeds and descriptions of each parcel is included in the case file.

3. Surrounding uses are predominantly commercial agricultural and farm dwellings.
4. Soil Survey for Marion County, Oregon, indicates approximately 100% of the soils on the subject tax lots 700(24C), 500, 800, & 1000, 99.9% of the soils on subject tax lot 900, and 99.6% of soils on the subject tax lot 700 are classified as high value.

Section	Tax Lot	Percentage of High-Value Soils
24C	700	100%
25	500	100%
25	700	99.6%
25	800	100%
25	900	99.9%
25	1000	100%

5. The applicants are proposing to adjust the property lines on six parcels to consolidate a blueberry farm onto a single 143.15-acre parcel, while eliminating one parcel and decreasing the other parcels to sizes appropriate for rural residences (1.81, 3.41, 2.91, and 2.47-acres). The applicants are also proposing to replace a dwelling on one of the parcels being adjusted to 2.47-acres.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor's Office commented:

Marion County Surveyor may require more than one page survey map or separate maps for each adjustment, depending on complexity and clarity of adjusted properties. The project surveyor is strongly encouraged to contact the county surveyor.

- No survey required for abutting properties greater than ten acres per ORS 92.060(8).
- Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- Survey checking fee required at the time of review.
- Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4).

Marion County Building commented: When establishing new or adjusted property lines, a minimum of 3 foot setback to existing residential structures is recommended. If any less, additional fire resistive construction and/or materials may be required on existing structures. Permit(s) would be required to be obtained prior to altering the existing structures for additional fire resistance. Also, prior to development and/or utilities installation on private property, permits would also be required.

Marion County Septic provided records of septic permits and commented:

Lot A (proposed 1.81 Acres): There is no permit/records available on the installation of the system. An existing system evaluation is required to show the existing system fits within the proposed parcel. A site evaluation is also required to establish a repair area.

Lot B (Proposed 3.41 Acres): A Site evaluation is required to establish a future repair area. Please see the attached as-built (4308269.pdf) for the system indicating the correct location of the existing system

Lot C (Proposed 2.47 Acres (admin review for replacement dwelling)): No Dwelling on the property and no septic record. When applying for a building permit, a site evaluation will be required.

Lot D (Proposed 2.47 Acres): An existing system evaluation with a stakeout of the repair area indicating that 525 linear ft can fit within the allocated repair area. I have attached the records from this system (Septic-2113930.pdf) to assist in locating the repair area.

Lot E (Proposed 143.15 Acres): Nothing is required on this proposed parcel.

Marion County Tax Assessor's office provided tax related information on the subject parcels.

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

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required to inspect and direct any required modifications necessary to bring the access approach into compliance with MCPW Engineering standards.
- B. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits for the replacement dwelling on TL 700. Credit for the prior existing use is not able to be given since the former dwelling was removed from the tax roll in 2016.

ENGINEERING ADVISORY

- C. Prior unpermitted access approach paving work conducted at 8758 Stayton Road (TL 1000) resulted in 2009 Access Permit #09-01447 being issued for corrective action, however to our knowledge the remedial work had not been completed.

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

7. Chapter 17.136.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling with filing of the Declaratory Statement in MCC 17.136.100(C), other than as permitted in MCC 17.136.020(D), when the dwelling:

- (a). *The dwelling to be altered, restored or replaced has or formerly had:*
1. *Intact exterior walls and roof structure;*
 2. *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 3. *Interior wiring for interior lights; and*
 4. *A heating system; and*

A review of aerial photographs, building permits, tax assessor data, and a fire department incident report indicate the existence of a dwelling on parcel 092W250000700 up until 2016. The applicant provided pictures of the dwelling, tax information showing the dwelling being assessed, and testimony as to the state of the dwelling and its removal. We can see that the dwelling had intact exterior walls and a roof structure. The well and septic on the property support the applicant's assertion that the dwelling had functional plumbing. In the pictures we can see a power pole on the road next to the dwelling, as well as an antennae on the dwelling which supports the applicants assertion that the dwelling had electricity. A visible chimney shows that the dwelling had at least the heating system of a fireplace. Furthermore, vehicles in the driveway suggest that the dwelling was habitable and likely had all of the above required aspects of a dwelling. The criterion is met.

- (b). *In addition to the provisions of subsection (D)(1) of this section, the dwelling to be replaced meets one of the following conditions:*
1. *If the dwelling was removed, destroyed or demolished:*
 - a. *The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
 - b. *Any removal, destruction, or demolition occurred on or after January 1, 1973.*
 2. *If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or*
 3. *A dwelling not described in subsection (D)(2)(a) or (b) of this section was assessed as a dwelling for the purposes of ad valorem taxation:*
 - a. *For the previous five property tax years; or*
 - b. *From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010;*

The dwelling was destroyed by fire in 2016. After a period of being uninhabited, the dwelling became subject to vandalism and squatting. The windows and doors were boarded up to deter further property damage, but someone cut holes in the foundation and floor to gain continued access. Evidence suggests a squatter started the fire on March 12th, 2016 that burned a large portion of the house. This fire was described in incident number 16-0000187. The applicant explains that the fire department used the remaining parts of the structure for a "burn to learn" which fully demolished the structure. The structured continued being assessed as a dwelling by the Marion County Assessors Office until 2022. The condition (D)(2)(a) of MCC 17.136.020 is satisfied, therefore the criterion is met.

- (c). *The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*
1. *Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*
 2. *If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
 3. *If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location;*

The dwelling was destroyed by fire in 2016, the criterion does not apply.

- (d). *The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted;*

The dwelling was destroyed by fire in 2016, the criterion does not apply.

- (e). *As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;*

The entire property is zoned EFU, this criterion does not apply.

- (f). *A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;*

Applicable requirements shall be conditions of approval. The criterion is met.

- (g). *The replacement dwelling must be sited on the same lot or parcel consistent with the following:*
1. *Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and*
 2. *If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.*

The proposed replacement dwelling would be on the same parcel, in the same area as the previous dwelling. As a result of the proposed property line adjustment, this parcel would become would be reduced from 14.86-acres to 2.47-acres around the site of the former dwelling, with frontage on Santiam Loop SE. The criterion is met.

8. The criteria for reviewing property 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 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.

All parcels are smaller than the minimum parcel size, criterion does not apply.

- (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.*

Criterion does not apply.

- (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.*

The overall configuration is at least as suitable for commercial agriculture because the 143-acres of blueberry farm is being preserve as a single parcel. If these parcels were to be sold separately as they currently exist, they would be smaller agricultural parcels less suitable for commercial agriculture. By isolating the legal dwellings, the smaller parcels will confine the rural residential uses and protect the primary overall use of commercial blueberry production. The criterion is met.

- (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.*

The result of this property line adjustment will be 5 parcels, four with dwellings. All the existing, and proposed replacement, dwellings are legal based on predating zoning ordinances. None of the dwellings were qualified under primary farm dwelling requirements. The resulting 143.14-acre lot may in the future qualify for a primary farm dwelling. It will not qualify based on an acreage standard, or land that was previously used to justify a primary farm dwelling. The criterion is met.

- (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 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.*

The proposed PLA is extensive, and exact tax lot designations are not made clear on the provided site plans. However, it is entirely possible for the adjustment to take place without dwellings moving tax lots. The final configuration will include one less parcel than currently exists. The 0.17-acre dwelling (Section 24C, TL 700) could be seen as being absorbed by the adjacent parcel with the address 8758 Stayton Rd SE. Of the five remaining parcels, the parcel without a dwelling or proposed replacement dwelling is the 5-acre parcel (Section 25, TL 800) which could be seen as growing to encompass all of the remaining farmland to become the 143.15-acre parcel. Therefore, we can say that the existing dwellings will remain on their current tax lots and that this criterion does not apply.

9. 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.
10. Based on the above findings, it has been determined that the proposal for a replacement dwelling, and a property line adjustment in an EFU zone both satisfy all applicable criteria and are, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 16, 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.