

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. 22-023**

APPLICATION: Application of Barker Surveying on behalf of Steven and Carrell Deshaw & Deshaw Tree Farms for a property line adjustment to adjust the property lines on a 10.16-acre parcel and a 10.17-acre parcel to create a 1.42-acre parcel and an 18.91-acre parcel in a Farm/Timber (FT) zone located at 18417 and 18480 Calinda Drive NE, Silverton. (T7S, R1E, Section 9A, Tax Lots 100 and 200).

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 and any necessary survey plat (see conditions of approval) accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **June 22, 2024**. 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 well, septic, and drain field replacement area requirements, 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. 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.
2. Per Marion County Septic Division, a septic record review is required for the proposed 1.42-acre lot. A site plan must be submitted showing the existing system with the setback to the proposed property line, as well as an area designated for a future repair system.
3. Except for the resultant property that is greater than ten acres, 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 prior to submitting the property line adjustment survey. See the Marion County Surveyor's Office comments in the Findings and Conclusions for more details.
4. An access easement must be provided for the resultant 1.42-acre parcel in accordance with MCC 17.172.560 and 17.110.800 because the resultant property will not have 20 feet of frontage on a public right-of-way.

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 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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 (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 **June 22, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 23, 2022**, 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 Farm/Timber in the Marion County Comprehensive Plan and correspondingly zoned FT (Farm/Timber). The primary intent of both this designation and zone is to allow a mixture of agricultural and forest management uses in areas where the soils are suitable for farm or forest uses. This zone also serves as a transitional zone between large-scale EFU lands and large-scale TC lands.
2. Adjacent properties to the north and east are zoned EFU (Exclusive Farm Use). Adjacent properties to the south and west are zoned FT (Farm/Timber). The neighboring EFU properties are large-scale farm operations that appear to be growing a mixture of crops including trees. The neighboring FT properties are smaller in scale, with homesites and some tree crops based on aerial images.
3. The subject properties are located approximately 1000 feet east of the intersection of Timber Trail Road NE and Calinda Drive NE. Tax lot 100 is developed with one dwelling and multiple accessory structures. Tax lot 200 is developed with one dwelling and multiple accessory structures.
4. Tax lot 100 has existed as a single legal parcel in its current configuration since before September 1, 1977, per a warranty deed recorded in Volume 638, Page 454 of the Deed Records of Marion County. No further changes to tax lot 100 were recorded by deed (or otherwise) since, and so the property has remained legal. Tax lot 200 has existed as a single legal parcel in its current configuration since before September 1, 1977, per a warranty deed recorded in Volume 723, Page 233 of the Deed Records of Marion County. A major partition application (MP79-21) to partition tax lot 200 into two 5-acre parcels was denied in 1979. No further changes to tax lot 200 were recorded by deed (or otherwise) since, and so the property has remained legal. Both properties are considered legal parcels for the purposes of land use per Marion County Code 17.110.427.
5. The applicants' initial survey and application are proposing to adjust the property lines on a 10.17-acre parcel (Parcel A/Tax Lot 100) and a 10.16-acre parcel (Parcel B/Tax Lot 200) to create an 18.91-acre parcel (Parcel A/Tax Lot 100) and a 1.42-acre parcel (Parcel B/Tax Lot 200).
6. Soil Survey for Marion County, Oregon, indicates approximately 29.4% of the soils on the subject tax lots are classified as high value.

7. Marion County Surveyor's Office commented:

Must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. No survey required on the resultant property that is greater than ten acres.

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 survey map. 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. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)]

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

9. Marion County Building Division commented that no concerns exist regarding the proposed property lines in relation to existing structures.

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

11. The criteria for reviewing lot line adjustments within an FT zone are listed in Chapter 17.139.090(D) MCC. These criteria are as follows:

1. *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.139.090(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.*

Tax Lot 100 is 10.17 acres in size per the initial survey and is proposed to increase in size to 18.91 acres. Tax Lot 200 is 10.16 acres in size per the initial survey and is proposed to decrease in size to 1.42 acres. The minimum property size listed in MCC 17.139.090(A)(1) for FT parcels is 80 acres. Based on these facts, both parcels are smaller than the minimum size and therefore this section does not apply.

2. *A property line adjustment may not be used to:*

- a. *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;*
- b. *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*
- c. *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.*
- d. *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.*

No parcel will be increased to larger than the minimum parcel size. No parcel was created via subdivision or partition authorized by a Measure 49 waiver. Tax Lot 100 is developed with a dwelling that was built in 1977, and therefore predates zoning law. Tax Lot 200 is developed with a mobile home dwelling that replaced a previous mobile home. According to the 1983 replacement building permit, the previous mobile home existed on the property since at least 1973, and therefore predates zoning law. Neither dwelling was qualified based on an acreage standard. The criterion is met.

3. *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 17.139.030(E) so long as the adjustment:*
 - a. *Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels;*
 - b. *Does not increase the potential number of dwellings on the resulting parcels; and*
 - c. *Does not 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.*

This property line adjustment will not relocate any of the existing dwellings to a different parcel. Therefore, these criteria do not apply.

12. Further criteria for reviewing lot line adjustments within an FT zone are listed in Chapter 17.139.090(E) MCC. This section states “*Property line adjustments if the land was predominately devoted to forest use on January 1, 1993*” shall comply with certain criteria. Based on historic aerial imagery, these properties appear have been devoted to Christmas trees since that date. Christmas trees are considered a farm use rather than a forest use per MCC 17.110.223. Therefore, neither of these parcels were predominately devoted to forest use on January 1, 1993, and these criteria do not apply.
13. 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.
14. 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.
15. Based on the above findings, the applicants’ proposal meets the criteria for a property line adjustment in an FT zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: June 7, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.