

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 CASE NO. 22-022**

APPLICATION: Application of Norman Bickell on behalf of Donovan & Ashley Sippel for an administrative review to determine the number of legal parcels within a 13.8-acre tract in an AR (Acreage Residential) zone located at 5756 Fruitland Road NE, Salem (T7S; R2W; Section 28BA; Tax Lot 300).

DECISION: The Planning Director for Marion County has **determined that tax lot 300 consists of five (5) legal parcels.**

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 **October 25, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 26, 2022**, unless further consideration is requested.

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

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The primary intent of both this designation and zone is to allow for development of acreage homesites in a low-density environment in order to maintain quality of environment and compatibility with other rural uses.
2. The property is located approximately 700 feet east of the intersection of Northwood Drive NE and Fruitland Road NE. The property is approximately 13.73 acres in size. Currently, the property is developed with one dwelling and multiple accessory structures. Adjacent properties in all directions are zoned AR (Acreage Residential). Fruitland Creek flows through the northern half of the property. Near the creek also exists a small pond.
3. The applicant is requesting a review to determine how many legal parcels exist within the property. Per Marion County Code 17.115, a proposed use, structure, or the legality of a lot or parcel may be reviewed as an administrative review when it requires an interpretation or the exercise of factual, policy, or legal judgement. Section 17.115.110 states:

The administrative review procedures, as provided below, shall be followed in making these decisions.

A. The decision shall be made on the basis of the comprehensive plan and applicable standards and criteria in this title. The director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use, structure, lot or parcel or to the standards or criteria. Administrative review applications may be filed and shall be signed as required in MCC [17.119.020](#) and [17.119.025](#). Notwithstanding any other provisions of this title, the director or designee may forward any land use permit or application to the planning commission or hearings officer for a public hearing and initial decision.

4. Marion County Code 17.110.427 defines a legal parcel as:

“Parcel” means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land sales contract prior to September 1, 1977, excluding units of land created solely to establish a separate tax account. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008. RZ Ord. § 110.427.]

5. The applicant has submitted evidence from previous deeds and platted subdivisions which predominantly were created prior to September 1, 1977. This review will examine the history of the underlying legal parcels within tax lot 300 (the subject property). The applicant also refers to Oregon Revised Statute 92.017 which reads:

(1) A lawfully created lot or parcel remains a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law.

6. Some of the earliest survey records show that originally there are two subdivisions underlying the subject parcel, both created prior to land use law in the 19th century. The first is Capital City Fruit Farm. The second is Hampden Park. The subject property’s northern portion lies within the boundaries of what were lots 54 and 55 of Capital City Fruit Farm. The southern portion lies within what were lots 15, 16, and 17 of Hampden Park. These subdivision lots were further altered by the transfer of property via deed and/or land sales contract. In order to meet the definition of 17.110.427 as mentioned above, those deeds must have been recorded prior to September 1, 1977.
7. In Volume 261, Page 326 of the Deed Records of Marion County, a warranty deed recorded in 1941 shows that Lots 15 and 16 of Hampden Park along with a metes and bounds description which covers portions of Lots 54 and 55 of Capital City Fruit Farms were deeded to Bruce and Lottie Squier. The metes and bounds description appears to have been written because of potential overlap between the Hampden Park and Capital City Fruit Farms plats. This legal description has been since used even in the most recent deed conveying the property to the current owners (Reel 4430, Page 278 of the Deed Records of Marion County). Regardless of the metes and bounds description and any potential overlap, there is an understanding that the lot lines for Capital City Fruit Farms have not been vacated. Therefore, Capital City Fruit Farms Lots 54 and 55 are still recognized each as a legal parcel. These first two parcels meet the requirements of MCC 17.110.427.
8. Next, in Volume 319, Page 82 of the Deed Records of Marion County, a quit claim deed recorded in 1945 describes a tract of land that was previously a part of the north portion of Lot 17 of Hampden Park. The deed describes this tract as a distinct piece of land, thus meeting the requirements of MCC 17.110.427. This is the third legal parcel.
9. Lastly, Lots 15 and 16 of Hampden Park were split by deed in 1975. The southern half of each lot was conveyed in deeds recorded in Reel 15, Page 1452 and Reel 25, Page 935 of the Deed Records of Marion County. The remnants of Lots 15 and 16 were separately described in subsequent deeds. Each northern half represents a single legal parcel; these are the fourth and fifth legal parcels on the property. Both parcels meet the requirements of MCC 17.110.427.

10. Marion County Building Division commented: Any proposed property lines should be at least 3 feet from any existing residential dwellings and at least 10 feet from any existing farm building, otherwise fire resistive alterations may be needed for the existing buildings exterior walls. Permits are required for any future development and/or utilities on private property. If the property lines and barn are existing as shown on the submitted site plan, the barn then may have been built on the property lines or on adjoining lots and a property line adjustment may be needed to move the existing property lines to establish the existing barn on a single lot.
11. Marion County Surveyor's Office commented: Marion County Surveyor's recognizes that there are 5 units of land. In the event of reconfiguration of Lots 54 and 55 of Capital City Fruit Farms a replat would be required to remove the underlying lot lines, as they are considered whole, platted lots.
12. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies failed to comment.
13. Based on the above findings, the Planning Director for Marion County has **determined that tax lot 300 consists of five (5) legal parcels.**

Brandon Reich
Planning Director/Zoning Administrator

Date: October 10, 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.