

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. 22-025**

APPLICATION: Application of Ty Wyman on behalf of Celeste Roth for an administrative review to determine the legal status of a 115.57-acre parcel in a EFU (Exclusive Farm Use) zone located at 4836 Forest Ridge Road NE, Silverton (T7S; R1E; Section 6; Tax Lots 100).

DECISION: The Planning Director for Marion County has **determined that tax lot 100 is a legal parcel for land use purposes. The western property line of this parcel appears to have been adjusted by deed to resolve uncertainty over the boundary in response to Marion County Planning Case Major Partition 78-100. Such an adjustment appears to have met the requirements of the partition and subdivision ordinances of the time.**

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 **September 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 **September 23, 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 Exclusive Farm Use in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on both sides of Forest Ridge Road NE approximately 0.75 miles north of the intersection of Highway 214 and Forest Ridge Road NE. The property is approximately 115.57 acres in size according to Marion County Tax Assessor data. Currently, the property is developed with one dwelling (constructed in 1910 per the Assessor's Office) and multiple accessory structures. Adjacent properties to the west, north, and east are also zoned EFU. Properties to the south are zoned a mixture of AR (Acreage Residential) and FT (Farm/Timber). Davis Creek flows through the eastern portion of the property. As mentioned previously, Forest Ridge Road passes through the property.
3. The applicant is requesting a review to determine the legal status of the parcel and a review of changes to the property line on the west side. 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 a relevant Major Partition that occurred in 1978. A warranty deed recorded in 1957 in Volume 497, Page 110 of the Deed Records of Marion County shows the property being conveyed to Alvin & Elizabeth Roth. At that time, the property’s legal description describes a configuration which does not appear to match the existing property lines. Based on the applicant statement, it appears the biggest question is with regards to the western property line and how it changed.
6. A review of the legal description used for the parcel underlying tax lot 100 was conducted. It appears that no other deeds or planning cases that would have altered the property line occurred after the 1957 deed until 1981. A quit claim deed recorded on October 9, 1981, in Reel 263, Page 892 of the Deed Records of Marion County shows that Elizabeth Roth appears to be quit claiming portions of the property to Dennis & Susan Downey and Albert & Helen Reeves. The legal description of the quit claimed property refers to two separate parcels.
7. A review of the adjacent properties to the west found that there were three parcels created by Major Partition 78-100. The parent parcel which was partitioned in that case was owned by Albert and Helen Reeves according to the partition application, tax maps, and a deed recorded in Volume 700, Page 134 of the Deed Records of Marion County. A review of the legal description for the parent parcel and the partitioned parcels suggests that the Reeves tract and Roth tract may have had overlapping legal descriptions. The Planning file contains no reference or notes that indicate that this was investigated at the time of the partition application. The partition application was approved by the Planning Director, the Planning Commission, and Board of Commissioners.
8. Major Partition 78-100 was recorded on March 20, 1979. The recorded plat was signed by the Planning Director as well. As proposed, the partition created three parcels. The plat survey showed a fence which did not line up with the property lines of the proposed partition, possibly suggesting that the exact property line was not clear to the owners at the time.
9. It appears that the quit claim deed previously mentioned was subsequently recorded in 1981 in an attempt to resolve the overlapping property lines. The effective Marion County Subdivision and Partitioning Ordinance at the time was Ordinance Number 540, recorded on June 27, 1979. Per Section III, subsection 6(a), “in any zone a lot line may be adjustment [sic] by mutual consent of the property owners for a non-conforming lot or parcel, or to resolve a boundary dispute, provided the adjustment in no way increases the degree of non-conformance of the subject property or adjacent properties.” This adjustment between the larger Roth tract and the parcels created by Major Partition 78-100 did not increase non-conformance of either parcel. The zoning requirements of the time were met in the partition case, and by adopting the same line proposed in the partition, the adjustment makes sure that conformance with the code was maintained.

10. Whether or not this quit claim deed legally resolves the property line issue from other legal perspectives is unclear. If further deeds are required due to unclear chain of title or other reasons, the property owners may need to consult with a lawyer or title company. In addition, it appears that the legal description of the Roth tract was not updated in subsequent deeds to reflect the changes. A lawyer or surveyor may be required to resolve the legal description.
11. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies failed to comment.
12. Based on the above findings, the Planning Director for Marion County has **determined that tax lot 100 is a legal parcel for land use purposes. The western property line of this parcel appears to have been adjusted by deed to resolve uncertainty over the boundary in response to Marion County Planning Case Major Partition 78-100. Such an adjustment appears to have met the requirements of the partition and subdivision ordinances of the time.**

Brandon Reich
Planning Director/Zoning Administrator

Date: September 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.