

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
PARTITION CASE NO. 18-032**

APPLICATION: Application of Re No Two LLC to divide a 4.0 acre parcel into two parcels containing 2.0 acres and 2.0 acres each in an AR (Acreage Residential) zone located at 5599 Riverdale S, Salem (T8S; R4W; Section 13C; tax lot 2500).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Partition application subject to certain conditions.

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **January 23, 2021**. 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 proposed division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. 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: The following conditions must be met before a building permit can be obtained or the approved use established:

Prior to recording the final plat:

1. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition Case 18-032. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
3. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

Condition A – On the partition plat dedicate a right-of-way half-width of 30 feet for public roadway purposes along the subject property Riverdale Road frontage.

Condition B – Prior to plat approval, Applicant shall demonstrate a good faith effort to secure an access easement over the adjacent private access easement Sunset View Lane, and if that were to be successful, the Lane access approach shall be paved in asphalt under an Access Permit from MCPW Engineering, and, all access to Riverdale Road S to the subject property shall be permanently closed including gate removal.

Alternate Condition B – On the partition plat depict reciprocal access easements of 10 feet wide x 50 feet deep on either side of the dividing property line for shared access from Riverdale Road.

Condition C – If an access easement from Sunset View Lane is secured, prior to plat approval, provide a recordable Road Maintenance Agreement for upkeep of the Lane.

Condition D – Prior to plat approval, remove fencing from within the 30-foot Special Setback of Riverdale Road.

Alternate Condition D - Prior to plat approval, record a Removal Agreement with MCPW Engineering for the potential future removal of fencing within the 30-foot Special Setback of Riverdale Road.

4. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
5. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final mylar to the County Surveyor.

Prior to issuance of building permits on the resulting parcels:

6. The partition plat shall be recorded.
7. The applicant shall provide a static water level measurement for any new wells intended as the water supply for the lot on the enclosed form.
8. The applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division (enclosed). This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
9. The applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement (enclosed) to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

10. 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. All parcels shall be a minimum two acres in size, prior to any right-of-way dedication.
11. After the final Partition plat has been recorded 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. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

12. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
13. The applicant should contact the Salem Suburban 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.
14. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

APPEAL PROCEDURE: The Marion 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, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **January 23, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 24, 2019** unless further consideration is requested.

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

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas. The property is also in the Sensitive Groundwater Overlay Zone.
2. The subject parcel is located on the southwest corner of Riverdale Rd S and Sunset View Ln S. The 4.0 acre parcel identified as tax lot 2500 contains an existing 1988 manufactured dwelling, accessory structures, well and septic system. The existing manufactured home replaced the old house which was converted to storage in 1998. The property was described in its current configuration by deed (Vol 732, page 465) recorded on July 26, 1972, and is considered a legally created parcel for land use purposes
3. Surrounding properties in all directions are zoned AR and in residential use.
4. The applicant proposes to divide the 4.0 acre parcel into two parcels of 2.0 acres and 2.0 acres each.
5. Public Works Land Development and Engineering Permits commented as follows:

“Engineering Conditions:

Condition A – *On the partition plat dedicate a right-of-way half-width of 30 feet for public roadway purposes along the subject property Riverdale Road frontage.*

Nexus for the above Condition is in accordance with Marion County Code (MCC) 17.172.240 and to meet Marion County Engineering Standards for the minimum Right-of-Way width of 60 feet for a rural Local road.

Condition B – *Prior to plat approval, Applicant shall demonstrate a good faith effort to secure an access easement over the adjacent private access easement Sunset View Lane, and if that were to be successful, the Lane access approach shall be paved in asphalt under an Access Permit from MCPW Engineering, and, all access to Riverdale Road S to the subject property shall be permanently closed including gate removal.*

Alternate Condition B – *On the partition plat depict reciprocal access easements of 10 feet wide x 50 feet deep on either side of the dividing property line for shared access from Riverdale Road.*

Access is typically a Requirement and in this instance has been elevated to a Condition as a matter of timing to ensure legal access to both lots is established appropriately, in accordance with Policy 10(b) of the MC Rural Transportation System Plan, wherein divided property shall establish a common access to the public road system.

Condition C – *If an access easement from Sunset View Lane is secured, prior to plat approval, provide a recordable Road Maintenance Agreement for upkeep of the Lane.*

MCPW Engineering has a template and can prepare the RMA at no cost other than recording fees.

Condition D – *Prior to plat approval, acquire a permit from MCPW Engineering, and under the permit, improve Midway Avenue to include paving the entire width of the street using Hot-Mix Asphalt flanking the property frontage.*

Alternate Condition D - *Prior to plat approval, remove fencing from within the 30-foot Special Setback of Riverdale Road.*

Note: Chain-link fencing appears to be situated approximately 18 feet relative to the Riverdale Road roadway centerline.

Alternate Condition D – *Prior to plat approval, record a Removal Agreement with MCPW Engineering for the potential future removal of fencing within the 30-foot Special Setback of Riverdale Road.*

As allowed under MCC 17.112.020(C). Non-conforming structures would need to be removed within 45 calendar days upon written notification. Please coordinate with Eric Anderson in MCPW Traffic Engineering for this option.”

Engineering Requirements

“E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

F. Utility work in the public R/W requires permits from MCPW Engineering.

G. In accordance with MCC 11.10, driveways must meet sight distance, design, spacing, and safety standards.

The following numbered sub-requirements pertain to access:

- 1) A single shared access to Riverdale Road centered on reciprocal easements may be allowed if demonstrated effort to secure legal access from Sunset View Lane is unsuccessful.
- 2) A driveway “Access Permit” for access to the public right-of-way will be required upon application for building permits.
- 3) Any gate allowed to remain that faces Riverdale Road must be situated a minimum of 25 feet from edge-of-pavement.”

Engineering Advisories

“Applicant should also be aware of the following:

H. The subject property is traversed by a mapped seasonal drainageway. Applicant is advised that construction of improvements on the property should not block historical naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.”

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee, second mylar fee, and recording fee required. A current or updated title report must be submitted at the time of review. Title reports shall be no less than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.”

Marion County Building Inspection commented that permits are required for new construction or placement of a manufactured home.

Marion County On-Site Sewage commented that an approved septic evaluation will be required for all undeveloped parcels. For sites with an existing septic system, the applicant shall request a review and complete any steps necessary for system approval.

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

6. Chapter 17.181 of the Marion County Code (MCC) establishes criteria for partitioning property in a Sensitive Groundwater Overlay zone (SGO). In order to meet criteria in Chapter 17.181 MCC, the applicant submitted a “Hydrogeology Report” which indicates there is a sustainable long-term supply of groundwater for the proposed development. Peer review of the Hydrogeology Report was positive. The County requires a Declaratory Statement be recorded with the property deed to notify the applicants and subsequent owners that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells. In addition, the applicant must meet the water level monitoring requirements in MCC 17.181.120. This includes a static water level measurement of all existing wells prior to recording the plat, and at least one static water level measurement prior to the issuance of a building permit in any new or existing wells intended as the water supply for the lot. This requirement is only for lots created by partitions recorded after January 1, 1998. This will be made a condition of approval.
7. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres and the new parcels are consistent with this standard. In addition, the resulting undeveloped parcels, if they can obtain septic approval, are of sufficient size and shape to meet the development standards in the AR zone.

8. Staff recognizes the final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum 2.0 acres prior to any required right-of-way dedication.
9. MCC 17.128.050 establishes special siting standards for dwellings near resource zones:
 - (a) *Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.*
 - (b) *The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.*

Although the proposed partition is appropriate, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. Any approval can be conditioned to meet this criterion.

10. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: January 8, 2019

If you have any questions please contact Patty Dorr 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.