

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. 19-005**

**APPLICATION:** Application of Lisa Schurter Living Trust, CMP Roth Farms LLC, and Matthew Roth and Jaimee Roth to adjust the property lines on a 9.09 acre parcel, a 80.06 acre parcel, a 60 acre parcel and a 33 acre parcel to create an 11 acre parcel, a 105 acre parcel, a 64 acre parcel and a 2 acre parcel in an EFU (Exclusive Farm Use) zone located at 5174 Shannon Rd NE and 4914 Shannon Rd NE, Silverton. (T7S; R1W; Section 06; tax lots 100, 200 and 300).

**DECISION:** Notice is hereby given that the Planning Director for Marion County has **APPROVED** the above described request subject to certain conditions.

**EXPIRATION DATE:** Title transfer instruments accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **March 19, 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 request 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 proposal 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:

1. **Property line adjustment deeds shall be recorded with the County Clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **This property line adjustment is not complete until the title transfer instruments accomplishing the property adjustments are recorded by the applicants with the Marion County Clerk.**
2. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office prior to submitting the property line adjustment survey.
3. Deed recording reference numbers shall be noted on the required survey.
4. The applicants shall have the 2.0 acre parcel surveyed per ORS 92.060 (7). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Property Line Adjustment Case 19-005. (Final Plat Instructions enclosed).
5. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:  
  
***Condition A** – Prior to PLA survey approval, record a Removal Agreement with Marion County for the potential future removal of fencing and ornamental vegetation within the Shannon Road public right-of-way.*
6. Prior to recording the deeds or filing the survey, the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
7. 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.

8. The adjusted property lines shall maintain a minimum 20 foot setback from all existing structures.

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

9. 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 Finding #6 be contacted to identify restrictions or necessary permits.

10. Prior to recording the deeds all taxes due must be paid to the Marion County Tax Office (at 503-588-5215 for verification of payments).
11. 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 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 (Appeal 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 **March 19, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 20, 2019** unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The parcels are located on the east side of Shannon Rd NE approximately 2,475 feet south of the intersection with Hazelgreen Road NE. The 9.09 acre parcel identified as tax lot 200 contains an existing dwelling, accessory structures, well and septic system. Tax lot 300 contains one existing dwelling dating back to 1914, accessory structures, farm structures, well and septic system. Tax lots 100, 200, and 300 received approval for a Lot Line Adjustment (LLA02-37) and are considered legally created parcels for land use purposes. Tax lot 300 is composed of two parcels that are described separately in deeds as far back as August 25, 1964 and are considered to be two legally created parcels for land use purposes.
3. Surrounding properties in all directions are in farm use in an EFU zone.
4. Soil Conservation Service Soil Survey of Marion County indicates the properties are 98% high-value farmland soils.
5. The applicants propose to adjust the property lines on a 9.09 acre parcel, a 80.06 acre parcel, a 60 acre parcel and a 33 acre parcel to create an 11 acre parcel, a 105 acre parcel, a 64 acre parcel and a 2 acre parcel. The purpose is to separate the dwelling and accessory structures located on tax lot 300 from the farmed portion of the two parcels that

make up tax lot 300, enlarge tax lot 200 from 9 acres to 11 acres and reconfigure the cultivated portion of the subject property into a 105 acre parcel and a 64 acre parcel.

6. Public Works Land Development and Engineering Permits (LDEP) requested that the following Condition and Requirements be included in the land use case:

***“Condition A – Prior to PLA survey approval, record a Removal Agreement with Marion County for the potential future removal of fencing and ornamental vegetation within the Shannon Road public right-of-way.***

In accordance with Marion County Code (MCC) 11.45, an owner or lawful occupant of land shall not allow any structure, tree, natural or manmade thing to present a danger or create a hazard for the traveling public in the public right-of-way. We have chosen the recordation of a Removal Agreement, as provided for under Marion County Code 17.112.020(C), in lieu of requiring removal of the fence and vegetation within the public right-of-way at this time. An application has been enclosed.”

Requirements:

“B. 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) No new access will be allowed to Shannon Road.
- 2) Prior to plat approval, record an access easement to be referenced on the PLA survey such that the proposed 64-acre parcel shares the southern access with the proposed 2-acre parcel. According to the land use application site map for the Final Configuration it appears that the proposed 2-acre lot would have both northern and southern accesses, and the proposed 64-acre lot would have none unless provided by an easement. Alternatively, arrange the parcels such that only the proposed 64-acre parcel is served by the southern access, and only the proposed 2-acre parcel is served by the northern access.
- 3) Prior to PLA survey approval, obtain an Access Permit, and under the Permit, narrow the graveled shop access on the proposed 11-acre parcel to meet Marion County Standards, or as authorized.”

Marion County Surveyors Office commented: “No survey required on the 11 acre, 105 acre, or 64 acre parcels. The 2 acre parcel must be surveyed per ORS 92.060(7) and the survey submitted for review. A survey checking fee must be paid at the time of review. Property line adjustment deed shall be recorded with the county clerk. Marion County Planning requires perimeter descriptions of the resultant properties. 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.”

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

7. The criteria for reviewing property line adjustments within an EFU zone are listed in Section 17.136.090(C) of the Marion County Code (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.*
- (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.*
- (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.*

- (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.*
- (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 the 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.*

8. According to MCC 17.136.090(A)(1) the minimum lot size for a parcel in an EFU zone is calculated as follows:

- (a) *All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*
- (b) *The average (mean) size of all parcels larger than 40 acres identified in paragraph (a) of this subsection shall be determined.*
- (c) *The acreage size calculated in paragraph (b) of this subsection, rounded to the nearest 10 acres, is the minimum parcel size, unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

In this instance, the average calculated parcel size is 79.3 acres (476 acres/6 parcels) therefore, the minimum parcel size for this proposal is 80 acres under provisions of #8 above.

9. One of the parcels exceeds 80 acres and three are less than 80 acres in size. One parcel, after the adjustment, would still exceed 80 acres and three would remain below 80 acres in size. Therefore, the proposed adjustment meets the required minimum parcel sizes in #7(a) and (b). The reconfiguration will not result in the removal of any land from agriculture production. It appears that the proposal would result in comparable management of the parcels. Both parcels that each currently contains an existing dwelling will each contain a dwelling after the property line adjustment. The applicants are not reconfiguring the parcels for, or applying for, a dwelling. The criteria in #7(c), (d), and (e) are met.
10. 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.
11. 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.
12. Based on the above findings and conclusions, the proposal meets the criteria for a property line adjustment in an EFU zone and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: March 4, 2019

If you have any questions please contact Lisa Milliman 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.