

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
PROPERTY LINE ADJUSTMENT/PARTITION CASE NO. 19-017**

APPLICATION: Application of ATR Services Inc and Larrie and Georgea Dovich to adjust the property lines on a 3.0 acre parcel and a 7.46 acre parcel to create a 4.0 acre parcel and 6.46 acre parcel, and then to divide the resulting 6.46 acre parcel into three parcels of 2.46 acres, 2.0 acres and 2.0 acres each in an AR (Acreage Residential) zone located at 7684 Dovich Ln SE, Turner and 4185 Delaney Rd SE, Turner (T8S; R2W; Section 30DB; tax lots 101 and 300).

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

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **July 11, 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 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 Property Line Adjustment/Partition Case 19-017. 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. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
4. 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.
4. 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 partition plat approval, provide evidence of recorded access easements across Tax lots 100 and 101 for the use of Dovich Lane for the proposed parcels it will serve.*

***Condition B** – Prior to partition plat approval, complete improvements to the Dovich Lane access approach, and etc., as outlined in active Access Permit #555-19-002325-DA issued in the name of one of the co-applicants to this case.*

Prior to recording the re-plat:

5. The plat dividing tax lot 300 shall be recorded.
6. In a separate calendar year than the plat is recorded, the applicant shall submit a replat 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 Property Line Adjustment/Partition Case 19-017. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
7. Prior to submitting the re-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.**
8. Deeds resulting from the replat shall be recorded after the re-plat.
9. Prior to submitting the final partition plat, the applicant shall provide a static water level measurement for the existing well on the enclosed form.
10. 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:

11. The partition plat and re-plat shall be recorded.
12. Prior to issuance of building permits, 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.
13. Prior to issuance of building permits, 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.
14. Prior to issuance of building permits, 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:

15. 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.
16. 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:

17. 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).

18. The applicant should contact the Turner 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.
19. 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 **July 11, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 12, 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 north side of Delaney Road SE in the 4200 block. Tax lot 101 was created as a result of Partition Case #02-7. Tax lot 300 was created as a result of the partitions of surrounding land. Both parcels are considered legally created for land use purposes.
3. Surrounding property to the west and south is zoned AR and in residential use. Surrounding property to the north and east is zoned SA (Special Agriculture) and being farmed or in stands of native timber.
4. The applicant proposes to divide a 7.46 acre into three parcels of 2.0 acres, 2.0 acres and 3.46 acre each. Then the applicant proposes to replat the resulting 3.46 acre parcel and the neighboring 3.0 acre parcel into three parcels of 2.46 acres, 2.0 acres and 2.0 acres each.

Once the initial plat is recorded, the parcel resulting from that plat cannot be a part of another plat in the same calendar year. The property line adjustment is performed in the form of a replat when either parcel involved was previously platted. Therefore, the property line adjustment must take place in a separate calendar year from the first plat that divided tax lot 300.

5. **Public Works Land Development and Engineering Permits (LDEP)** requested the following be included in the land use decision:

*“**Condition A** – Prior to partition plat approval, provide evidence of recorded access easements across Tax lots 100 and 101 for the use of Dovich Lane for the proposed parcels it will serve.*

Nexus for the above Condition is in accordance with Marion County Code (MCC) 17.172.560 whereby an easement serving one or more lots in any partition must meet County standards.

***Condition B** – Prior to partition plat approval, complete improvements to the Dovich Lane access approach, and etc., as outlined in active Access Permit #555-19-002325-DA issued in the name of one of the co-applicants to this case.*

Access work is typically an Engineering Requirement, but has been elevated to Condition status as a matter of timing for completion in order to meet PWDS for the added development.”

Engineering Requirements:

“C. 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.

D. In accordance with MCC 11.10, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards.

E. The applicant shall provide evidence of a recorded Declaration of Covenants for Road Maintenance Agreement (RMA) regarding the private, shared access easement named Dovich Lane. Public Works needs to review, approve and sign the RMA prior to recordation if a recorded RMA does not currently exist. Please contact Public Works Engineering at (503) 584-7714 for details.”

Engineering Advisories:

“F. The local fire district has authority to require, as a condition for plat approval and/or issuance of building permits, that driveways and private easements either meet fire district standards for access, have a fire sprinkler suppression system installed on certain proposed structures, or be approved by waiver of the local fire marshal. The Marion County Fire Code Applications Guide stipulates fire apparatus access roads (access in excess of 150 feet in length) must have an unobstructed 20-foot width and 13.5 feet of vertical clearance. The Guide also specifies a suitable turnout area for emergency vehicles at 400-foot intervals for longer accesses.

G. We recognize that there is an open Access Permit for work to improve Dovich Lane and close an unpermitted access between Dovich Lane and Cabos Way (555-19-002325-DA). When this work is completed please schedule for final inspection.

H. Per Marion County GIS records it appears a natural drainageway crosses the subject property from northwest to southeast. Construction of improvements on the property should not block historical or 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:

“Partition: Property described in Reel 4083, Pg. 443, Deed Records (Taxlot No. 082W30DB00300) to create three parcels containing 2.0 acres, a 2.0 acres, and 3.46 acres respectively. Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee and recording fees required. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

Property Line Adjustment: Between Parcels created by Partition Plat stated above, and Parcel 2, Partition Plat No. 2005-016. A re-plat (in the form of a partition plat) is required, due to the adjustment of partition plat parcel lines. A property line adjustment deed shall be recorded with the Marion County Clerk’s Office, prior to the recording of the re-plat. Deed recording reference numbers shall be noted on the plat. As 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. Re-plat: (Re-configuration of lots or parcels and public easements within a recorded plat). Must comply with all provisions per ORS 92.185 (6). Must be surveyed and platted per ORS 92.050, and the plat submitted for review. Checking fee and recording fees required. A current or updated title report must be submitted at the time of review. The resultant property deeds shall be recorded after the recording of the re-plat.

Other comments specific to this Planning Action: The partition of the property described in Reel 4083, Pg. 443 must occur first, then the re-plat. Please note that only one partition plat can occur in a calendar year.”

Turner Fire District commented on access requirements for the properties.

Marion County On-Site Sewage commented that site evaluations are required for both proposed 2.0 acre parcels. Existing System Evaluation required for the proposed 2.46 acre parcel. Record Review required for the proposed 4.0 acre parcel.

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

Comments were also received from neighbors challenging the conclusions for the hydrogeology review. While the information provided may have merit, the Zone Code does not give staff the ability to review the information provided against the conclusions of a licensed geologist.

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. The two proposed new parcels will be at least two acres each and 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.*

Based on the configuration of the resulting parcels and the depth of the lots, it does not appear that a dwelling would be able to meet the special setback and be plated on the property. Therefore, the special setback standards will not be applied. 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.

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

Joe Fennimore
Director-Planning Division

Date: June 26, 2019

If you have any questions please contact Brandon Reich 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.