

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.23-005

APPLICATION: Application of Pape Properties, Inc. and Susan and Richard Haener Living Trust to adjust the property lines in the form of a re-plat on an 80.00-acre parcel and an 8.98-acre parcel to create a 23.98-acre parcel and a 65-acre parcel in an EFU (Exclusive Farm Use) zone located at 11693 Ehlen Road NE, Aurora (T4S; R1W; Section 9; Tax Lots 600 and 602).

DECISION: The Planning Director for Marion County has **APPROVED** the above-listed Property Line Adjustment application 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 **April 11, 2025**. The effective period of an approved application may be extended for an additional year subject to approval of an extension (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 uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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. A re-plat (**in the form of a partition plat**) is required, due to the adjustment of a partition plat parcel. The plat shall contain the notation that the survey is the result of PLA23-005.
2. 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.

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 **April 11, 2023**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 12, 2023**, unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which 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 primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The properties are located on the northern side of Ehlen Rd NE, approximately 0.30 miles west of its intersection with Bents Ct NE. Tax lot 602 contains the existing Pape Machinery business and associated buildings. Tax lot 600 is vacant and is in farm production. Both parcels were created through Partition Plat 2088-058 and were the subject of P/CU07-067 and are therefore considered legally created for land use purposes.
3. Adjacent properties are all zoned EFU and are in commercial farm use. Grass seed dominates the area with a large chicken farm directly to the west.
4. Soil Survey for Marion County, Oregon, indicates approximately 100% of the soils on the subject tax lots are classified as high value.
5. The applicants are proposing to adjust the property lines on an 80.00-acre parcel and an 8.98-acre parcel to create a 23.98-acre parcel and a 65-acre parcel.
6. Marion County Surveyor's Office commented:

A re-plat (**in the form of a partition plat**) is required, due to the adjustment of a partition plat parcel line or subdivision lot line.

The deeds conveying the re-platted parcels shall be recorded after the recording of the re-plat.

Marion County Assessor's Office provided information regarding taxes on the subject properties.

Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.

7. The criteria for reviewing lot line adjustments and partitions within an EFU zone are listed in Chapter 17.136.090 MCC. Because this is processed as a re-plat, the criteria in MCC 17.1363090 (B) apply. These criteria are as follows:

B. Requirements for Creation of New Non-Farm Parcels.

1. *A new non-farm parcel may be created for uses listed in MCC 17.136.040(C) and (K) and MCC 17.136.050, except the residential uses in MCC 17.136.050(A) and (B).*

Commercial uses in conjunction with farm use are a conditional use listed in MCC 17.136.050 (D). The parcel is being created for expansion of an existing commercial in conjunction with farm use operation. The criterion is met.

2. *The criteria in MCC 17.136.060 applicable to the use shall apply to the parcel.*

The conditional use review criteria have already been applied to the use through CU22-008. The criterion is met.

3. *A non-farm parcel shall not be approved before the non-farm use is approved.*

The use has already been approved though CU22-008. The criterion is met.

3. *A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.*

This shall be made a condition of approval.

5. *If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following criteria:*

- a. A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.*
- b. A parcel created pursuant to this subsection that does not contain a dwelling:*
 - i. Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;*
 - ii. May not be considered in approving or denying an application for siting any other dwelling;*
 - iii. May not be considered in approving a redesignation or rezoning of forest lands or farmlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and*
- c. May not be smaller than 25 acres unless the purpose of the land division is:*
 - i. To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or*
 - ii. To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.*

The land is not proposed for the uses described above. The land will be used for a tractor dealer and repair center, which has existed since 2007. The criterion does not apply.

6. *A division of land smaller than the minimum lot or parcel size described in subsections (A) and (B) of this section may be approved to establish a religious organization including cemeteries in conjunction with the religious organization if they meet the following requirements:*

- a. The religious organization has been approved under MCC 17.136.040(C);*
- b. The newly created lot or parcel is not larger than five acres; and*
- c. The remaining lot or parcel, not including the religious organization, meets the minimum lot or parcel size described in subsections (A) and (B) of this section either by itself or after it is consolidated with another lot or parcel.*

No religious organization is being proposed. The criterion does not apply.

7. *A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:*

- a. The partition must occur along the urban growth boundary; and*
- b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;*
- c. If the parcel does not contain a dwelling, the parcel:*
 - i. Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;*
 - ii. May not be considered in approving or denying an application for siting any other dwelling; and*
 - iii. May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use;*
- d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.*

No portion of this proposal is within an UGB or redesignated for urban use. The criterion does not apply.

8. The Marion County Surveyor commented that a survey (replat) is required, therefore, this will be made a condition of approval.
9. 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.
10. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 27, 2023

If you have any questions regarding this decision contact Austin Barnes 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.