

**CHAPTER 17.172
SUBDIVISION AND PARTITION REQUIREMENTS**

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17.172.010 PURPOSE. In the interpretation and application of this chapter, the provisions hereof shall be held to be the minimum requirements adopted for the public health, safety, and welfare. To protect the people, among other purposes, such provisions are intended to provide for adequate public services and safe streets for accomplishing, among other things, the following objectives:

- A. Better living conditions within new subdivisions.
- B. Simplification and definiteness of land descriptions.
- C. Establishment and development of streets, utilities, and public areas.
- D. Stabilization of property values in the subdivision and adjacent areas.
- E. Provide standards and regulations which will inform the public and aid in uniform enforcement.
- F. To regulate the subdividing and partitioning of land in areas outside urban growth boundaries in Marion County in accord with applicable state statutes and the state planning goals.

17.172.020 GENERAL DEFINITIONS. For the purpose of this chapter, words used in the present tense include the future, the singular number includes the plural, and the term "this chapter" shall be deemed to include all subsequent amendments.

“Applicant” means any person as defined herein who makes application to Marion County for approval of a subdivision or partition plan.

“Board” means the Marion County board of commissioners.

“Building lines” means the lines indicated on the subdivision plat, or otherwise described, limiting the area upon which structures may be placed.

“Commission” means the Marion County planning commission.

“Centerline” means the legally described survey lines on which the right-of-way was initially established or to which the right-of-way was subsequently relocated.

“Division” means the Marion County planning division.

“Director” means the planning director or planning director’s designee.

“Easement” means the right to use or cross a parcel of land.

“Flag lot” means a lot, the major portion of which has access to a street by means of a narrow strip of land not less than 20 feet in width.

“Hearings Officer” means a person designated by the Marion County board of commissioners to hear and decide certain land use cases.

“Manufactured home” means a vehicle or structure constructed for movement on public highways that has sleeping, cooking, and plumbing facilities, is intended for human occupancy, and is being used for residential purposes.

“Notification area” shall be as set forth in MCC 17.111.030 (C).

“Partition” means either an act of partitioning land or an area or tract of land partitioned as defined in this chapter.

“Partition land” means to divide land into two or three parcels of land within a calendar year, but does not include:

- A. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
- B. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing land reduced in size by the adjustment complies with an applicable zoning code;
- C. The division of land resulting from the recording of a subdivision or condominium plat;
- D. A sale or grant by a person to a public agency or public body for state highway, county road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and ORS 215.213(2)(p) to (r) and 215.283(2)(q) to (s). However, any property divided by the sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned; or
- E. A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

“Planned development” means a subdivision of land incorporating common open space with each dwelling being placed on its own lot. See Chapter 17.121 MCC.

“Plat” includes a final map, diagram, drawing, replat, or other writing containing all descriptions, locations, specifications, dedications, provisions and information concerning a subdivision or partitioning and complying with the provisions of ORS 92 and 209.

“Property line adjustment” means the adjustment of a common property line between two or more parcels that does not create an additional parcel, or elimination of a common property line between abutting properties.

“Shall” means mandatory.

“Street” or “road” means a public or private way that is or has been created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining, or agricultural purposes. The term "street" shall include thoroughfare as defined herein.

A. Arterial.

1. Principal Arterial.

- a. Continuous segments with trip length and travel density indicative of statewide or interstate travel; and
- b. Serves all of the large urban areas and most of the moderate sized cities.

2. Arterial.

- a. Links cities, larger towns, and other major traffic generators; and provide interstate and inter-county service; and
- b. Spaced such that all developed areas of the region are within reasonable distance of an arterial; and
- c. Serves a higher travel density, trip length, and overall travel speed than collector and local systems.

B. Collector.

1. Major Collector.

- a. Provides service to larger towns not directly served by higher classed roads and to other traffic generators of equivalent intra-county importance (including parks, tourist attractions, significant resource areas, etc.); and
- b. Links these places with nearby towns and cities, or routes of higher classification; and
- c. Serves the more important intra-county travel corridors.

2. Minor Collector

- a. Spaced at intervals to collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road; and
- b. Provides service to any remaining smaller communities and traffic generators; and
- c. Links locally important traffic generators with their local constituents.

C. “Cul-de-sac” means a dead-end road or street with vehicular turnaround at or near the dead end.

D. “Dead-end street” means the same as cul-de-sac with no turnaround at the dead end.

E. “Half street” means a portion of the ultimate width of a road or street where the remaining portion of the road or street shall be provided at a future date.

F. Local.

1. Primarily provide access to adjacent lands; and
2. Provide relatively short travel distances compared to higher classed facilities.

“Subdivide land” means to divide land into four or more lots within a calendar year.

“Subdivider” means any person who undertakes the subdivision of land.

“Subdivision” means either an act of subdividing land or an area or a tract of land subdivided.

“Thoroughfare” means any vehicular way through the planned development or any vehicular way within the planned development.

- A. Minor thoroughfares are to serve specific property only, not the general traffic circulation in the area, and need to be constructed only wide enough to adequately perform this function. Minor thoroughfares include "T" turnarounds, cul-de-sacs, circles, loops, and those "L" shaped streets not functioning as a through thoroughfare.
- B. Major thoroughfares are publicly owned streets permitting traffic to move in one side of the planned development and out of another.

“Utilities” means any water, gas, sanitary or storm sewer, electrical, telephone, drainage way, wire, or television communication service and all persons, companies, or governmental agencies supplying the same.

“Utility facilities overhead” means all utility poles, overhead wires, and associated overhead facilities with the exception of:

- A. Antennae, associated equipment, and supporting structures used by a utility for furnishing communication services.
- B. Equipment appurtenant to underground facilities such as surface-mounted transformers and switchgear, pedestal-mounted terminal boxes, meter cabinets, concealed ducts, and municipal fire alarms, street lights, traffic control signals and poles used exclusively for such services as are served from an underground source of supply.
- C. Temporary poles, overhead wires, and associated overhead facilities used in conjunction with construction projects.
- D. High-capacity electric and communication feeder lines and utility transmission lines operating at 50,000 volts or more.

ARTICLE I. GENERAL REGULATIONS

17.172.040 CONSIDERATIONS FOR APPROVAL OR DENIAL. When considering a property line adjustment, subdivision or partitioning, the commission, director, hearings officer or board, when it exercises its authority pursuant to MCC 17.172.050, shall consider whether or not it is in accordance with the adopted zoning code provisions, comprehensive plans, and land development policies of Marion County. In reviewing an application, the commission, director, hearings officer or board may prescribe conditions or make changes or modifications to the property line adjustment, subdivision or partitioning to bring them into compliance with any applicable zoning code provisions or regulations.

17.172.050 DIRECTOR REVIEW. The provisions of this chapter and other provisions of this zoning code notwithstanding, the director shall have the power to decide applications for all property line adjustments and partitions and impose conditions consistent with this zoning code. Any appeal shall be conducted pursuant to MCC 17.119.150.

The planning commission, hearings officer or board shall have the power to decide applications for a subdivision. If the planning commission, hearings officer or board makes the initial decision, the review body shall conduct a public hearing on the application pursuant to Chapter 17.111 MCC.

The director shall also have the power to forward an application for a property line adjustment, partition and subdivision to the hearings officer or planning commission for the initial decision. In such case, the review body shall conduct a public hearing on the application pursuant to Chapter 17.111 MCC.

17.172.060 APPROVAL REQUIRED BEFORE CREATING STREET TO PARTITION LAND. No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the commission, director, hearings officer or board.

17.172.080 PROHIBITION OF SALE OR TRANSFERS OF LOTS PRIOR TO RECORDING OF PLAT. No person shall dispose of, transfer, sell, or agree, offer or negotiate to sell any lot in any subdivision or any parcel in a partition, except as authorized in ORS Chapter 92.

17.172.120 PROPERTY LINE ADJUSTMENTS. The following requirements shall apply to all property line adjustments:

- A. Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the planning director.
- B. Except as provided in subsection (A) of this section, no approval is necessary for property line adjustments in the RM (multiple-family residential), C (commercial), CC (community commercial), ID (interchange district), I (industrial), or IUC (unincorporated community industrial) zones.
- C. Except as provided in subsection (B) of this section, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10 percent of the total land area of the smallest affected parcel.
- D. Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 to 92.190.
- 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.

ARTICLE II. ROADS, STREETS AND EASEMENTS

17.172.140 ENGINEERING STANDARDS AND REQUIREMENTS. Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County department of public works.

17.172.160 DEDICATION OR DEEDING OF ROADWAY. No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as a roadway without first obtaining the approval of the board and delivering the deed to the board for its endorsement. No dedication is effective unless the property is accepted by the board and recorded with the Marion County clerk's office.

17.172.180 DEAD-END STREETS. When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision and shall have a turnaround with a configuration approved by the Marion County Department of Public Works engineering.

17.172.200 RADIUS AT STREET INTERSECTIONS. The property line radius at street intersections shall be to the Marion County public works department's standards.

17.172.220 STREET GRADES. No street grade shall be in excess of 12 percent unless the commission or hearings officer finds that, because of topographic conditions, a steeper grade is necessary. The commission or hearings officer shall require a written statement from the director of public works indicating approval of any street grade that exceeds 12 percent.

17.172.240 DEDICATION OF RIGHT-OF-WAY. If land to be subdivided or partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the zoning code, standard right-of-way widths are subject to the standards of the Marion County department of public works.

17.172.260 ADDITIONAL RIGHT-OF-WAY WIDTHS. Where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way may be required to be dedicated to allow all cut and fill slopes to be within the right-of-way.

17.172.280 PERFORMANCE STANDARDS. Whenever adequate assurances of performance are required as a condition of approval of any subdivision under this zoning code, the applicant shall provide one of the following:

- A. A surety bond executed by a surety company authorized to transact business in the State of Oregon, in an amount equal to 125 percent of the construction cost of the required public improvements, as verified by the county.
- B. A verified deposit with a responsible escrow agent or trust company of cash or negotiable bonds in an amount equal to 125 percent of the construction costs of the required public improvements, together with an agreement that the deposit may be disbursed only upon county approval. The agreement shall include a provision that the county shall allow release of the deposit in such amounts and at such times as a corresponding proportion of the required improvements are completed to the satisfaction of the county engineer following an inspection by the county engineer or the engineer's authorized representative.
- C. An irrevocable letter of credit from one or more financial or lending institutions pledging that funds equal to 125 percent of the construction cost of all required improvements are available to the applicant and are guaranteed for payment for the improvements.

Regardless of the option chosen above, no building permits for any structures within the subdivision will be issued until all improvements have been completed by the applicant. In the event the applicant fails to complete all improvements, the county may estimate the cost of completing any required improvement, call on the bond or deposit for the funds necessary to complete the improvement, and complete the improvement to the extent of the funds obtained upon call of the bond or deposit. If the amount obtained from the bond or deposit is insufficient to complete the improvement, the county may either hold the collected funds until additional funds are authorized for the improvement or expend the collected funds on a revised improvement or on a portion of the improvement as determined reasonable by the director of

public works. Following final inspection, if the improvement is complete and the amount of the bond or deposit exceeds the actual cost to the county of completing the improvement, the remainder shall be released.

- D. **Maintenance Bonds.** The applicant shall provide a maintenance bond in a form approved by the office of legal counsel equal to 40 percent of the construction cost of all required improvements. The applicant shall provide the bond within 30 days after final review of the required improvements. The bond shall remain in effect for one year after the completion of construction of all required improvements. The purpose of the bond is to guarantee applicant's obligation to maintain all required improvements for a period of one year after completion of construction of all required improvements. After the expiration of the one year period, any remaining balance on the bond shall be released. The bond shall include a provision stating that, in the event the county must take legal action to recover on this bond, and it prevails at trial or on appeal, the county shall be entitled to recover its reasonable attorney fees and its costs and disbursements. Nonpayment of the bond will not invalidate applicant's obligations under the bond.

17.172.300 UTILITY EASEMENTS. Utility easements meeting the approval of the Marion County department of public works shall be provided to all newly created lots.

17.172.320 STREET OR ROAD IMPROVEMENTS. All public street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the director of public works. Subdivision plats shall not have final approval until such time as the director of public works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County department of public works.

No building permits within a subdivision or partition shall be issued until the director of public works, or his/her designee, approves that the improvements have been completed or, sufficient improvement agreements and financial guarantees have been recorded.

17.172.340 PRIVATE STREETS. In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the homeowner's association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

ARTICLE III. LOTS

17.172.360 LOT SIZE. All lots approved under this chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the State or county in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimension shall be as prescribed in the corresponding zone.

17.172.380 CURVED FRONT LOT LINES CURVED FRONT LOT LINES. When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

ARTICLE IV. SEWAGE, WATER, UTILITIES AND STORMWATER MANAGEMENT

17.172.400 SEWAGE DISPOSAL. All lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the

Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. The commission, director, or hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director, or hearings officer deems it necessary and provided the connection is available.

17.172.420 WATER SUPPLY. All lots or parcels shall be served by an authorized public or private water supply system or individual private wells.

- A. Public or Private Systems. Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the Marion County department of public works.
- B. Individual Private Wells. Individual private wells must meet the construction requirements of the Oregon State Water Resources Department and be located in accordance with requirements of the State Health Division in relation to public or private sewage disposal systems. The bacteriological quality of this water may be determined through the Marion County health department. Upon receiving the recommendations from the State Health Division or Marion County health department, the hearings officer or commission may require the use of an engineered public or private water system in any proposed subdivision. Other criteria to be considered in making this determination are the recommendations contained in the Marion County Water Quality Management Plan, Marion County Comprehensive Plan, and Chapter 17.181 MCC.

17.172.430 STORMWATER MANAGEMENT. The impact of proposed subdivisions and partitions on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.

17.172.440 UNDERGROUND UTILITIES EASEMENTS. Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. When possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide easements on both sides of all road or street rights-of-way of 60 feet or less.

ARTICLE V. PARTITIONINGS

17.172.460 PRE-APPLICATION CONFERENCE. Prior to the actual filing of a partitioning application it is recommended that the applicant contact the staff for a pre-application conference. The meeting will enable the staff to review the proposal and determine if the partition is consistent with the intent of the zoning code provisions and Comprehensive Plan and whether public services are required and available.

17.172.480 PARTITIONING APPLICATION AND INITIAL DECISION. When an area or tract of land is to be partitioned an application shall be filed with the planning division provided that this section shall not apply to lots maintaining a minimum 20 feet of frontage on a public street right-of-way in the RM (multiple-family residential), C (commercial), CC (community commercial), ID (interchange district), I (industrial), or IUC (unincorporated community industrial) zones.

17.172.500 REQUIRED APPLICATION INFORMATION.

- A. The application form filled out completely in ink.
- B. Copy of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the parent parcel.
- C. Plot Plan. The plot plan should be on a separate sheet of paper eight and one-half inches by 11 inches and must be drawn in ink, showing the location of the proposed property lines and adjustments, and distances to structures, property lines, roads, driveway access and other features. The plot plan must be reviewed and initialed as accepted by a plans examiner from the building inspection division.
- D. A written statement that explains the reasons for dividing the land and how the division conforms to Marion County land use policies and regulations of the applicable zone.
- E. If the partitioning includes the creation of a private roadway the applicant must include four proposed road names in the order of preference.
- F. If the property is within the sensitive groundwater overlay zone, any study of water supply required by Chapter 17.181 MCC shall accompany the application. If the chapter requires peer review of the study, this must also be submitted with the partition application. If the property is within the geologically hazardous overlay zone, any study required by Chapter 17.182 MCC shall accompany the application. If the chapter requires peer review of the study, this must also be submitted with the partition application.
- G. Filing fee.

17.172.510 FILING OF APPLICATION. An application for a partition may be filed by one or more of the following:

- A. The owner of the property that is the subject of the application;
- B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- C. A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;
- D. The appropriate local government or state agency when the application is for public works project; or
- E. A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title.
- F. A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application shall be filed with the director in writing on an application form provided by the planning division. The application shall set forth the partition sought, the location of proposed property lines, the location of proposed and existing buildings and septic systems on the premises, the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the director, planning commission or hearings officer.

17.172.520 REQUIRED SIGNATURES. Applications shall include the following signatures:

- A. Signatures of all owners of the subject property; or
- B. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
- C. The signatures of lessee in possession of the property with the written consent of all the owners; or
- D. The signatures of the agents of those identified in MCC 17.172.510(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.172.510(B) or (C), and all the owners of the property; or

- E. The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or
- F. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.
- G. Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this zoning code more definite and complete proof is required. Nothing herein prevents the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

17.172.530 INFORMATION FROM AFFECTED AGENCIES. Upon receipt, a copy of the application shall be distributed to the Marion County department of public works, county assessor, county surveyor, building inspection division, and other affected agencies with a request for comments or suggestions regarding those features that come within the scope of their activities.

17.172.540 CONFORMANCE WITH REGULATIONS. Unless a variance is granted as provided herein, partitions shall conform to applicable regulations contained in MCC 17.172.180 through 17.172.660. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.

17.172.560 ACCESS STANDARDS. All lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.

- A. Have a minimum easement width of 20 feet;
- B. Have a maximum grade of 12 percent;
- C. Be improved with an all-weather surface with a minimum width of 12 feet;
- D. Provide adequate sight-distance at intersections with public roadways;
- E. Be provided with a road name sign at the public roadway as identification for emergency vehicles in accordance with Chapter 11.55 MCC, Naming and Addressing Roads/Property.

17.172.580 NOTIFICATION OF DECISION. Notice of the decision, including any variances, and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, co-tenants of the subject property if the property is owned by tenants in common, mortgagees, department of public works, affected county agencies, fire district, and all landowners within the notification area. This decision shall be final unless an appeal is taken as provided in MCC 17.172.600.

17.172.600 APPEAL. Upon final action on the partitioning by the director, interested persons may appeal the decision no later than 15 days after the decision is rendered.

17.172.620 PUBLIC HEARING. If the director's decision is appealed, the hearings officer or board shall conduct a public hearing in accordance with Chapter 17.111 MCC.

17.172.640 DECISION ON APPEAL. The hearings officer or board shall render a decision on the appeal in accordance with the provisions of this chapter, after the conclusion of the hearing. Notice of the decision shall be provided to the applicants, appellant, and others requesting notice in writing. The decision of the hearings officer may be appealed to the board no later than 12 days after the decision is rendered. The board may sustain the decision or decide the appeal with or without a further public hearing. If a public hearing is held it shall conform with Chapter 17.111 MCC. If the board exercises its authority pursuant to this section, its decision is final and appealable only to the Oregon Land Use Board of Appeals.

17.172.660 FINAL RECORDATION. Within two years of approval of the partitioning application, the applicant shall submit for approval by the director, a partitioning plat in the appropriate form that shall reflect the final decision. When approved, the plat shall be recorded with the Marion County clerk. Until the plat is approved and recorded, no building permits for any of the divided parcels shall be issued. Should the applicant fail to record a partitioning plat within two years the approval shall be deemed null and void. Extensions may be approved by the director upon submittal of written justification prior to the expiration of the two-year time limit.

ARTICLE VI. SUBDIVISIONS

17.172.680 SUBDIVISION PRE-APPLICATION CONFERENCE. Prior to the actual filing of a subdivision application the subdivider shall contact staff for a mandatory pre-application conference. The meeting will enable the staff to review the proposal and determine if the subdivision is consistent with the intent of this title and the Comprehensive Plan and whether public services are required and available.

17.172.700 APPLICATION. When an area or tract of land is to be subdivided an application shall be filed with the planning division. The applicant shall specify on the application whether the request is for conceptual or detailed approval or both. Conceptual approval indicates that the subdivision or PUD, in the general manner and density proposed, is deemed consistent with the Comprehensive Plan but conceptual approval shall not be binding on the planning commission or hearings officer with regard to specific design or engineering. In granting conceptual approval the commission or hearings officer shall identify any elements of the proposal that need further evaluation or refinement.

17.172.720 REQUIRED APPLICATION INFORMATION.

- A. The application form and any supplementary information filled out completely.
- B. Copy of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the parent parcel. Title reports are not acceptable.
- C. Twenty-seven copies of a scale drawing of the proposed subdivision with the following details shown:
 - 1. Structures, streets, driveway access points (existing and proposed), and easements (existing and proposed).
 - 2. Topography, drainage ditches.
 - 3. A layout of the proposed subdivision with proposed lot lines to scale, north arrow, and name and address of applicant.
- D. If the property is within the geologically hazardous overlay zone, any study required by Chapter 17.182 MCC shall accompany the application. If the chapter requires peer review of the study, this must also be submitted with the subdivision application.

- E. If the property is within the sensitive groundwater overlay zone, any study of water supply required by Chapter 17.181 MCC shall accompany the application. If the chapter requires peer review of the study, this must also be submitted with the subdivision application.
- F. Filing fee.

17.172.730 FILING OF APPLICATION. An application for a subdivision may be filed by one or more of the following:

- A. The owner of the property that is the subject of the application;
- B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- C. A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;
- D. The appropriate local government or state agency when the application is for public works project; or
- E. A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title.
- F. A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application shall be filed with the director in writing on an application form provided by the planning division. The application shall set forth the subdivision sought, the location of proposed property lines, the location of proposed and existing buildings and septic systems on the premises, the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the director, planning commission or hearings officer.

17.172.740 REQUIRED SIGNATURES. Applications shall include the following signatures:

- A. Signatures of all owners of the subject property; or
- B. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
- C. The signatures of lessee in possession of the property with the written consent of all the owners; or
- D. The signatures of the agents of those identified in MCC 17.172.730(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.172.730(B) or (C), and all the owners of the property; or
- E. The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or
- F. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.
- G. Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this zoning code more definite and complete proof is required. Nothing herein prevents the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

17.172.750 INFORMATION FROM AFFECTED AGENCIES. Upon receipt, a copy of the application shall be distributed to the Marion County department of public works, county assessor, county surveyor, and other affected agencies with a request for comments or suggestions regarding those features that come within the scope of their activities.

17.172.760 CONFORMANCE WITH REGULATIONS. Unless a variance is granted as provided herein, the subdivision shall conform to applicable regulations contained in MCC 17.172.180 through 17.172.660 of this chapter and planned developments shall, in addition, conform to the regulations in MCC 17.121.200 through 17.121.250. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.

17.172.780 PUBLIC HEARING. Upon receipt of responses from other departments and agencies, the commission, hearings officer or board shall hold a public hearing on the conceptual or detailed application as prescribed in Chapter 17.111 MCC. The hearing notice shall include a description of any proposed variances. The purpose of the public hearing shall be to elicit responses from interested persons concerning the appropriateness and feasibility of the proposed subdivision plan. If the application is for conceptual approval, a public hearing shall be held and a second public hearing at the time of application for detailed approval shall not be required.

17.172.800 NOTIFICATION OF DECISION. Notice of decision including any adjustments or variances granted, and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, those within the notification area, and any interested person, who, in writing, requests notification. This decision shall be final unless an appeal is taken as provided in MCC 17.172.820.

17.172.820 APPEAL. The decision of the commission or hearings officer may be appealed to the board no later than 15 days after the decision is rendered. The board may sustain the decision or decide the appeal with or without a further public hearing. If a public hearing is held, it shall conform with Chapter 17.111 MCC. If the board exercises its authority pursuant to Chapter 17.111 MCC, its decision is final and appealable only to the Oregon Land Use Board of Appeals.

17.172.840 ACTION AND RECORDING OF FINAL PLATS. After receiving detailed approval, a subdivider shall submit a final plat for approval. A subdivision plat, when ready for final approval prior to recording, shall be substantially in accordance with the approved detailed plan. The final plat shall be tied into the geodetic coordinate system used in the county. After the final plat has been filed with the Marion County surveyor and a copy forwarded to the planning division, the director shall review the final plat and compare it with the approved detailed plan to ascertain whether the final plan substantially conforms to the approved detailed plan and the conditions of approval. Before submitting the final to the board for approval, the final plat shall be approved and signed by all persons set out in the dedication, the mortgagees, if any, the director, county surveyor, county on-site wastewater specialist, county engineer, county assessor, and the signature and seal of the registered land surveyor responsible for the laying out of the subdivision. All the conditions of detailed approval shall be fulfilled before submitting the final plat to the county surveyor for approval and signature. If the county surveyor or planning director finds that there has not been substantial conformance with the approved detailed plan, the subdivider shall be advised of the changes that must be made and afforded an opportunity to make such changes.

When the final plat has been reviewed by the director and is found to be in substantial conformity to the approved detailed plan, the subdivider has fully complied with ORS 92.090(4) and (5), the director or authorized representative shall sign the final plat. The director may elect to submit the final plat to the commission or hearings officer for further review.

All signatures on the final plat shall be in black archival ink. Where the subdivider has expressed the intent, in writing, to develop the subdivision in phases, or stages, the final plat may contain all or only a portion of the approved detailed plan.

17.172.860 TIME LIMIT FOR THE FILING AND RECORDING OF A PLAT. When the subdivider has expressed intent to develop a subdivision in phases or stages, the first phase of the final plat, or, if not to be developed in phases or stages, the completed final plat must be filed with the Director by the first day of the 24th month following the date of detailed approval or said detailed approval shall be deemed null and void. The final plat shall be approved by public officials as required by law and recorded within 180 days following the date the plat is submitted to the director. Extensions to either time deadline may be approved by the director upon submittal of written justification prior to the expiration of the time limit.

ARTICLE VII. VARIANCES VIOLATIONS AND APPEALS

17.172.900 VARIANCES FROM REGULATIONS.

- A. Authorization. The commission, hearings officer or board may authorize a variance of any requirements set forth in this chapter. The director may authorize such concurrent variances for partitions without a public hearing. Variances concurrent with a subdivision application pertaining to any regulation contained in this title shall be authorized only as provided in the Chapter 17.122 MCC after a public hearing.
- B. Basic Consideration of a Variance. Variances to MCC 17.172.220 and 17.172.560 and Chapter 17.121 MCC may be granted only upon a sufficient showing as determined by the director, commission, hearings officer or board that:
 - 1. Special conditions or circumstances peculiar to the property under consideration make a variance necessary for the property development of the subdivision or partitioning and the preservation of property rights and values.
 - 2. That the variances will not be detrimental to the public welfare or injurious to other properties adjacent to or in the vicinity of the proposed subdivision or partitioning.
- C. Application for Variance. Any person wishing to obtain a variance from these regulations in this chapter shall submit to the division a written statement giving complete details of conditions and reasons why a specific variance should be granted are stated.

17.172. 920 APPEAL PROCEDURE. Any person may appeal the granting or denial of a variance of this title by filing a written appeal within the appeal period provided for the partitioning or subdivision. The procedure for considering appeals to variances shall be the same as that provided in MCC 17.172.640 and 17.172.820.

17.172.940 LOTS CREATED IN VIOLATION OF THIS CHAPTER. Any lot, parcel, street or road created in violation of the provisions of this chapter shall be deemed null and void. When such a lot or parcel of land is created in violation of the provisions of this chapter or has failed to receive approval of the county as required by ORS 92.040, the Marion County building official shall stop the construction of any structure in process on said property. No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, or is being used or has been divided in violation of the provisions of this chapter or this title, unless issuance of the permit would correct the violation.