

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. 24-006**

APPLICATION: Application of the Dennis Koenig Trust for a property line adjustment to adjust the property lines on a 27.40-acre parcel and a 86.26-acre parcel to create a 4.00-acre parcel and a 109.66-acre parcel in an EFU (Exclusive Farm Use) zone located at 7538 Stayton Rd SE, Turner (T9S; R2W; Sections 26C; Tax Lots 900 & 1000 and T9S; R2W; Sections 35; Tax Lots 500, 600 & 700).

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 16, 2026** (two years). 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. Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. No survey required for properties greater than ten acres per ORS 92.060 (8).
2. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. 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.
3. Applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
4. 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.

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

5. 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 below be contacted to identify restrictions or necessary permits.

6. Prior to recording the deed all taxes due must be paid to the Marion County Assessor Tax Section (contact them at (503) 588-5215 for verification of payments).
7. The applicants should contact the Stayton 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.

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 16, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 17, 2024**, 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 at 7538 Stayton Rd SE. Together they stretch from the south side of Stayton Rd SE to the Santiam River and the county line. Both parcels are almost entirely within the 100-year floodplain of the Santiam River. Parcel A is 27.4-acres and consists of fields in agricultural use and a wooded area around Cold Creek which crosses the property 1,800-feet south of the northern property line. Parcel B is made up of four tax lots totaling 86.26-acres with a dwelling and a shop on the northernmost portion. There are fields in agricultural use divided by Cold Creek and an adjacent wooded area. Approximately 20-acres of the southernmost portion of Parcel B consists of a wooded area with wetlands amongst braiding waterways of the lower North Santiam River. The farming operation utilizes both parcels, over a total of approximately 80-acres, in addition to adjacent parcels east of the subject parcel.
3. Subject parcel 1 (Tax lot 1000) was conveyed to the current owner in 1973 in its current configuration described in Volume 644 Page 100 in the Marion County Book of Land Records. Subject parcel 2 (Tax lots 500, 600, 700 of Section 35 and Tax lot 900 in Section 26C) was described by deed as it was conveyed to the current owner in 1973 in Volume 744 Page 734 in the Marion County Book of Land Records. Therefore, both parcels are considered legal lots for land use purposes.
4. Adjacent properties are zoned EFU and those to the east, north, and west are in use for commercial agriculture and farm dwellings. To the south along the Santiam River are parcels not in agricultural use but providing wooded buffers along the soughs of the Santiam, and related wetlands and floodways. South of the Santiam are more properties in agricultural use within Linn County. The eastern border of the community of Marion, which consists of AR (Acreage Residential) and CC (Community Commercial) zoned parcels, is one and a quarter miles to the west of the subject parcels.
5. Soil Survey for Marion County, Oregon is missing data on the southern portion of the subject parcels. Specifically, all of tax lot 600 of section 35 and approximately 90% of tax lots 500 and 700 of section 35 is missing from the soils map. In Tax lot 1000 of section 26C, 25% of the soil data is missing. A total of 72.06-acres

out of the 113.66-acres (63%) of the subject parcels' soils data is missing. This data is regarding the soils north of the Santiam River within the floodplain. Almost all this land is actively being farmed except for woodlands adjacent to waterways. Most of the soils that are accounted for are high value soils (38-acres out of the 41.6-acres we have data for).

6. The applicants are proposing to adjust the property lines on a 27.40-acre parcel and a 86.26-acre parcel to create a 4.00-acre parcel and a 109.66-acre parcel. The adjusted property lines will isolate the existing dwelling on its own lot and create a larger parcel of farmland.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor's Office commented:

- No survey required for properties greater than ten acres per ORS 92.060 (8).
- Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- Survey checking fee required at the time of review.
- Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. 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 Building Inspection commented: No Building Inspection concerns with application and proposed property line adjustment. If the new property line(s) are established less than 3 feet to an existing residential structure, additional fire resistive materials may be required to be installed on the exterior side of the exterior walls, which would require permits prior to installation. Consultation with a building plans examiner is recommended if this is encountered.

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

All other contacted agencies either failed to comment or stated no objection to the proposal.

8. The criteria for reviewing lot line adjustments within an EFU zone are listed in Chapter 17.136.090(C) 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.*

The minimum parcel size as determined through the process described in 17.136.090 (A) is 139.86-acres. This considers the average size of all parcels wholly or in part within 500 feet of the subject parcels. Both subject parcels are smaller than this minimum. One of the subject parcels is larger than the state required minimum of 80-acres, and the proposal will result in a parcel larger than the state requirement. The criterion is met.
 - (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.*

There is one parcel above 80-acres currently, and the proposed property line would result in one parcel still being above 80-acres. The criterion is met.
 - (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.*

The proposed property line adjustment will create a slightly larger parcel in agricultural use, and it will therefore be even more suitable for commercial agriculture than its current size. The criterion is met.

- (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.*

The resulting larger parcel will not be large enough to qualify for a dwelling based on an acreage standard. The criterion is met.

- (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 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.*

The proposal is to shrink the parcel that contains a dwelling to 4-acres, and increase the size of the other parcel to include all the land in agricultural use. No dwellings will be located on different parcels as a result of the proposed property line adjustment. This criterion does not apply.

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: April 1, 2024

If you have any questions regarding this decision contact John Speckman 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.