

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. 24-023**

APPLICATION: Application of Marcella J. Gilbert Living Trust and Gilbert Properties, LLC for a property line adjustment to adjust the property lines on a 1.0-acre parcel and a 37.14-acre parcel to create a 1.43-acre parcel and a 36.71-acre parcel in the EFU (Exclusive Farm Use) zone located at 10567 West Stayton RD SE, Turner (T9S, R2W, Section 12; Tax Lot: 1700, 1600).

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 **September 19, 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 drain field 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. Per the Marion County Surveyor's office, no survey is required for properties greater than ten acres per ORS 92.060 (8), however properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fees are 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).
2. **Prior to recording the deeds**, the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division. **See septic comments in finding #6.**
3. 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:

4. 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.

5. 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).
6. 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 **September 19, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 20, 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 on the east side of West Stayton Road NE approximately 3,100 feet south of Shaff Road SE. There are two parcels of land, one with a dwelling and the other lot is vacant farmland that surrounds the smaller lot on three sides. Both lots are bordered by West Stayton RD NE to the west. Tax lot 1700 contains the dwelling established in 1940 and several accessory buildings. Currently, the well for tax lot 1700 and a portion of the septic drain field are partially located on the adjacent and surrounding tax lot 1600.

Tax lot 1700 is described in its current configuration by deed on Reel 2818, Page 244 recorded 05/15/2007. This parcel as described was recorded in a 1964 survey (18029) and has not been significantly altered since. This parcel is considered legal for land use purposes.
Tax lot 1600 is described in its current configuration by deed on Reel 2668, Page 261 recorded 06/17/2006. This parcel as described was recorded in a 1920 survey (6371) and has not been significantly altered since. This parcel is considered legal for land use purposes.
3. Adjacent properties are all zoned EFU and are primarily engaged in agricultural uses. These lots are mostly in excess of 40 acres, with some smaller parcels one to nine acres with dwellings.
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 a 1.00-acre parcel and a 37.14-acre parcel to create a 1.43-acre parcel and a 36.71-acre parcel. The end result will be the smaller parcel will gain land on its western and southern common borders to allow the well for the dwelling and the septic drain field to be completely contained on the same parcel.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor's Office commented:

- 1) No survey required for properties greater than ten acres per ORS 92.060 (8).

- 2) Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- 3) Survey checking fee required at the time of review.
- 4) Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4).

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

Marion County Septic commented:

"Property A: Drain fields must have a 10' setback from proposed property lines. Based on the plot plan submitted with the RFC, a 9' setback is not sufficient, and an ESE [existing system evaluation] may be required. Additionally, the applicant must designate an area on the site plan that is physically large enough for a repair area meeting setbacks in OAR 340-071-0220."

As a condition of approval, the applicants shall coordinate with Marion County Septic to comply with conditions required for siting the repair system and required property line setbacks.

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

7. 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:

1. *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection (A)(1) of this section, 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.*

All the lots and parcels involved in this property line adjustment are below the minimum parcel size of 80-acres. This criterion does not apply.

2. *If the minimum parcel size in subsection (A)(1) of this section 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.*

All lots and parcels involved are already below the minimum parcel size and below 80-acres. The criterion does not apply.

3. *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 applicant is proposing to move a portion of the dwelling's lot onto the agricultural land to properly locate the dwelling's well and septic drain field onto the same lot. The proposed configuration would result in a slight loss (0.43 acres) of agriculture land that cannot be farmed due to the location of the well and septic drain field and increase the size of a non-farm parcel. The suitability for commercial agriculture on the farm parcel would be negligibly affected. The criterion is met.

4. *A property line adjustment may not be used to:*
 - a. *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;*
 - b. *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;*
- c. 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; or*
 - d. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.*

The proposal does not adjust either parcel in such a way that would qualify for a new dwelling. Both parcels are below the minimum lot size for the EFU Zone, and one parcel already contains an existing dwelling thus satisfying criteria *a* and *b*. Criteria *c* is met as the larger lot would qualify for a dwelling based on an acreage standard, and the other lot already has a dwelling. Finally, none of the lots were created by a partition authorized by Measure 49, so *d* is satisfied. The criterion is met.

- 5. *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:*
 - a. Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels;*
 - b. Does not increase the potential number of dwellings on the resulting parcels; and*
 - c. Does not 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.*

No dwellings would be located on a different lot or parcel as a result of the proposed property line adjustment. The criterion does not apply.

- 8. 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: September 4, 2024

If you have any questions regarding this decision contact George Brandt at (503) 588-3981.

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.