

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.

**NOTICE OF DECISION
PARTITIONING/CONDITIONAL USE CASE NO. 07-67**

APPLICATION: Application of Fischer Implements and Richard, Susan, Michael, Linda, Delbert, and Nannett Haener to divide an 81.35 acre parcel into two parcels containing 72.15 acres and 9.20 acres each and then for a conditional use to establish a farm equipment sales and repair facility as a commercial activity in conjunction with farm use on the resulting 9.20 acres in an EFU (Exclusive Farm Use) zone located at 11673 Ehlen Road NE, Aurora. (T4S; R1W; Section 9; tax lot 600).

DECISION: Notice is hereby given that the Planning Director for Marion County has **APPROVED A MODIFIED DECISION** to divide an 88.99 acre parcel into two parcels containing 80 acres and 8.99 and a conditional use to establish a commercial activity in conjunction with farm use on the resulting 8.99 acre parcel.

EXPIRATION DATE: This approval is valid only when the final partitioning plat is recorded by

NOVEMBER 20, 2009. After recording the final partitioning plat, the applicant shall provide proof of the recording to the Planning Division. This can be either a copy of the recording fee receipt or a copy of the plat showing the County Clerk's stamp. 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 division or use 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 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:

- i. Prior to issuance of any building permit(s), the applicant shall submit a final partitioning plat to the County Surveyor's Office [5155 Silverton Road NE; (503) 588-5036]. Following plat approval, the plat shall be recorded with the Marion County Clerk (final plat instructions and example enclosed).

2. The applicant is advised that a Title Report, from a title company, will be required upon submission of the final mylar to the County Surveyor.
3. Prior to submitting the final partitioning 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 the County Building Inspection Division, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
4. Prior to submitting the final partitioning plat, the applicant shall pay any additional property tax that may be imposed for the creation of the new parcel.
5. The applicant shall meet the requirements of Marion County Department of Public Works, outlined in finding # 6 below, to their satisfaction. [Contact person is Ted Joling at (503) 584-7714].
6. Prior to issuance of building permits, the applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for the proposed parcel. The applicants shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director (Declaratory Statement enclosed).
7. Prior to filing the plat, the applicant shall provide evidence satisfactory to the Planning Manager of meeting the "Marion County Fire code applications guide" as required by the Aurora Fire District.
8. The resulting farm parcel shall be a minimum of 80 acres in size.

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

9. After the final partitioning plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
10. The farm equipment sales and service business shall be operated as set forth in the applicant's statement and as conditioned in this decision. Any signs placed for the business shall comply with MCRZO Chapter 191.060. Any expansion or alteration of the business requires a new conditional use application.

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.

APPEAL PROCEDURE: The Marion County Rural Zoning Ordinance provides that certain Partition 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. Any interested person who disagrees with the Director's decision may request that the application be considered by the Marion County Hearings Officer after a public hearing. The applicant may also request a 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 the Hearings Officer, must be in writing (Appeal Form available from the Planning Division) and be received, together with the appeal fee, in the Marion County Planning Division, 555 Court St. NE, 2nd Floor, Salem, by 4:30 p.m. on **NOVEMBER 19, 2007**. Please note an appeal directly to the Land Use Board of Appeals is not allowed under ORS 197.830. If you have any question about this application or the decision please call 588-5038 or visit the County Planning Office at the above address. This decision is effective **NOVEMBER 20, 2007** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: The findings and conclusions on which the Director based his decision are noted below.

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The purpose of the Primary Agriculture designation and the corresponding EFU (Exclusive Farm Use) zone is to encourage the continuation of commercial agricultural activity and prevent the establishment of uses that hinder farming.
2. The property is located on the north side of Ehlen Road NE, 1,900 feet west of its intersection with Interstate 5. The property contains no improvements and is currently in agricultural use. The property was the subject of Lot Line Adjustment cases LLA94-17 and LLA95-24. LLA95-24 approved the current configuration that includes both tax lots 600 and 401 as a single parcel and is considered as being lawfully established.
3. Immediately surrounding properties to the north, west, and south are zoned EFU and devoted to large farm operations. The Fargo Interchange District lies south and east of the subject property.
4. According to the Soil Survey of Marion County Oregon the property is composed entirely of high-value farm soils. Current resource use of the parcel (from SIC manual): Type 0173 Acres 86.48; Type 0723 Acres 3.51
5. The applicant proposed to divide the 81.35 acre parcel into two parcels containing 72.15 acres and 9.20 acres each. The request was modified to include tax lot 401 as part of the subject property and to divide the 89.99 acre parcel into two parcels containing 8.99 acres and 80 acres each.

6. Marion County Department of Public Works reviewed the proposal and provided the following comments:

“Approval of the proposed Partition would allow division of the subject property, and the proposed Conditional Use would allow a farm equipment sales and repair facility as a commercial activity in conjunction with farm use on the subject property. According to the applicant’s Transportation Impact Analysis (TIA) this would result in approximately 328 additional daily trips on Ehlen Road and other roads in the area. The Public Works Department has the following comments, requirements, and recommendations for the proposed Conditional Use:

- a. In accordance with Chapter 172 of the Rural Zoning Ordinance of Marion County, Oregon, the applicant shall provide standard public dedicated right-of-way half-width along adjacent roads. However, it appears that no additional width is necessary. Any dedications should be to the public, not Marion County. Additional width shall be provided as necessary for any cut or fill slopes, or roadside ditches, to be within the right-of-way.
- b. In accordance with Chapter 172 of the Rural Zoning Ordinance of Marion County, if this development is approved, the applicant will be required to improve Ehlen Road along their frontage to county standards as directed by the Public Works Department. This is anticipated to include slope and drainage work, and vegetation clearing along the roadway. These frontage improvements shall be included on the engineering plans for the proposed development, and will need to be complete prior to construction of the building.
- c. As a condition of approval, in order to protect the public safety and welfare, the applicant must maintain adequate off-street parking for business traffic to park on-site. Parking will not be allowed along county roads. Failure to maintain adequate on-site parking would constitute grounds for revocation of approval.
- d. As shown in the applicant’s Transportation Impact Analysis (TIA), the proposed development would generate additional traffic through locations on Ehlen Road where traffic problems and improvement needs have been identified. In accordance with the plans and codes of Marion County, the applicant will be required to make a proportional share contribution to improvements in this area. Based on data from the TIA, this proportional share would be \$46,840, which must be paid before building permits would be issued.
- e. In accordance with the Marion County Rural Transportation System Plan, the proposed business would only be permitted one access to Ehlen Road, and this access would need to be designed so it could be shared by any future business on the remaining parcel. The remaining parcel will be allowed to retain one additional access for farm use only, and this access will need to meet spacing standards.
- f. In accordance with Marion County Driveway Ordinance #651, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. If this Conditional Use is approved, the applicant will be

required to obtain a driveway permit for the change in driveway use and make changes as necessary to establish safe and compliant access. The access would need to be paved to accommodate business traffic.

- g. Prior to plat approval, the applicant shall provide a Declaration of Covenants for Road Maintenance Agreement for any shared access (form available from Public Works).
- h. The developer should be aware that there is a 100-foot special setback (50 feet from centerline) on Ehlen Road. Buildings and parking required to meet minimum standards shall not be constructed in the special setback area. Parking in addition to the minimum spaces required may be located in the special setback with the understanding that they may need to be removed at the owner's expense if the additional right-of-way is needed in the future.
- i. Driveways must also meet fire district standards for emergency access.
- j. The applicant is reminded of their responsibility to preserve and protect nearby roads, ditches, and other public facilities from any damage that the applicant's activities would have the potential to cause. Failure to preserve and protect the roads, ditches, or other facilities may result in the applicant being responsible for replacing or reconstructing the damaged facility at their expense.
- k. Construction of the proposed development would increase the amount of storm water runoff from the subject property. The County requires any development 0.5 acre or larger to provide storm water detention. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm with development conditions.
- l. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Prior to plat approval, the applicant shall provide storm drainage plans for the site addressing drainage issues and detention elements.
- m. Public storm drainage improvements shall be built to Marion County Engineering and Construction Standards. Storm drainage shall be discharged to a suitable outlet and, where applicable, evidence provided that an adequate easement exists for transit of the water to such an outlet. The applicant will need to either a) show that downstream facilities can adequately handle the increased storm-water runoff that would be caused by this development, or b) provide storm-water retention systems that retain enough of the storm-water runoff on site so that there is no net increase in storm-water flow from the subject property. Acceptable drainage and detention systems must be in place prior to issuance of building permits.
- n. The subject property is within the rural unincorporated area of Marion County. Transportation Systems Development Charges shall be assessed upon development of the property.

- o. Any utility work in the public right-of-way will require a utility permit from Public Works.”

Marion County Surveyor's Office indicates that no survey is required for the parcel that is over 10 acres, but a survey is required for the smaller parcel. Per ORS 92.050, a Plat must be submitted for review along with required fees and a Plant service report and/or title report.

Marion County Tax Assessor provided information on the status of taxes on the property and indicates that any taxes due would have to be paid prior to a plat being recorded.

Marion County Building Inspection Division commented that a Septic Site Evaluation is required on both parcels to determine septic system feasibility.

All other contacted agencies either failed to respond, or stated no objection to the proposal at the time this report was written.

7. A conditional use for a commercial activity in conjunction with farm use must comply with the criteria listed in 136.060(d) as follows:
 - (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be “essential to the practice of agriculture.*
8. The applicant states that the business will include sales and service of farm equipment and small tools and hardware used to repair fences, farm buildings, and farm machinery. Landscaping equipment and other non-farm goods will be sold as incidental items making up not more than 10 percent of total annual sales. The applicant meets the criterion in 8(a).
9. The applicant indicates that customers will be drawn from the local area. It is reasonable to expect that farmers will choose the closest location offering similar products and services and Fisher Implements already has stores in Salem, Woodburn, St. Paul, McMinnville, and Gresham. The applicant meets the criteria in 8 (b), (c) and (d).
10. In addition to the specific criteria for a commercial activity in conjunction with farm use, the EFU zone has criteria that must be met for all conditional uses as follows:
 - (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

- (b) Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and would not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

11. The proposed use was determined to be in conjunction with farm use, therefore, it should not increase the cost of farm practices. The property is near farming operations to the north, west; and south. The parcel proposed to be created for the establishment of the commercial activity in conjunction with farm use is located in the southeast corner of an 88.99 acre parcel that is currently in agricultural production. The proposed use would take approximately 9 acres of land out of production but is placed so that the remaining portion of the large parcel can continue to be farmed. The proposed 9 acre parcel is large enough to accommodate the proposed business without impacting surrounding farming. It can also be made a condition of any approval that the applicants record a declaratory statement acknowledging surrounding farm uses. Rural fire protection is provided by the Aurora Fire District and police protection is provided by the Marion County Sheriff. Other rural services, such as well and septic, are available on site. There are no identified watershed conflicts, groundwater impoundments, fish and wildlife habitat, area of soil or slope stability concerns, or areas with impacted air and water quality on the property. There are no identified mineral and aggregate sites on the property. The proposal can be conditioned to meet the criteria in 10.

12. The following regulations in Chapter 136.090 apply when property line adjustments and partitioning of land within an EFU zone subject to the provisions of Chapter 172 are proposed:

- (a) Minimum parcel size for newly created parcels:*
 - (1) Non-farm parcels: A new non-farm parcel created pursuant to 136.090(b) shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses.*
- (b) Requirements for Creation of New Non-farm Parcels:*

- (1) *A new non-farm parcel may be created for uses listed in Sections 136.040(c) and 136.050, except the residential uses in Section 136.050(a) and (b).*
- (2) *The criteria in Section 136.060 applicable to the use shall apply to the parcel.*
- (3) *A non-farm parcel shall not be approved before the non-farm use is approved.*
- (4) *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.*
- (c) *Farm Parcels: The minimal parcel size for new farm parcels shall be calculated as follows:*
 - (1) *All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*
 - (2) *The average (mean) size of all parcels larger than 40 acres identified in paragraph (A) of this subsection shall be determined.*
 - (3) *The acreage size calculated in paragraph (B) of this subsection, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

13. In this instance a farm equipment sales and service business is approved as a commercial activity in conjunction with farm use in the Conditional Use Case that is being considered in conjunction with this partition application and meets the criterion in paragraph 12. (b) (1), above. The size of the proposed new parcel is approximately equivalent to the land area identified in the applicant's statement as necessary for the operation of the business and meets the criterion in paragraph 12. (a) (1). With approval of the conditional use, the farm equipment sales and service business has been determined to meet the conditional use criteria listed in Chapter 136.060 of the MCRZO and meets the criterion in paragraph 12. (b) (2). Since the farm equipment sales and service business is approved concurrently with the partition, the criterion in paragraph 12. (b) (3) is met. The criterion listed in paragraph 12. (b) (4) can be a made a condition of approval.

14. The larger parcel proposed in this partition will remain in farm use and must therefore meet the minimum lot size requirements identified in 12(c). The average size of all lots within 500 feet of the subject parcel that are at least 40 acres in size is 69 acres. Therefore the minimum parcel size in this case is 80 acres. The request has been modified so that this criterion is met.

15. Based on the above discussion, the applicants' proposal meets the criteria for a conditional use for a business in conjunction with farm use and a partition in an EFU zone. The partition/conditional use request is, therefore, **APPROVED**.

James Sears
Director-Planning Division

Date: 11/07/07

If you have any questions please contact Lisa Milliman at (503) 588-5038.