

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning Director's)
Approval and Denying the Appeal of Planning)
Docket L-39-16; Approval of a Property Line) Board Order 16-507
Adjustment for Tax Lots 5509-700 and 5510-1200;)
Applicants: James and Susan Ruggles)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 15, 2016, Commissioners Stan Primozich, and Allen Springer being present, and Commissioner Mary Starrett being excused.

IT APPEARING TO THE BOARD as follows:

A. By application dated August 19, 2016, James R. and Susan L. Ruggles, 15500 SW Dusty Drive, McMinnville, Oregon requested county approval of a lot line adjustment between two adjacent tax lots that they own at the location of their home (Tax Lots 5509-700 and 5510-1200) in the county's EF-80 zone;

B. On September 30, 2016, the Planning Director approved the application, with conditions, and on October 17, 2016, the approval was appealed by Harihara and Parvathy Mahesh, 15651 SW Dusty Drive, McMinnville, Oregon; and

C. On December 1, 2016, the appeal was heard by the Board of Commissioners. Following the hearing, which included discussions between the parties and the Board regarding the application, the Board voted 3-0 to uphold the Planning Director's decision, and to deny the appeal, with staff directed to prepare written findings for final adoption on December 15, 2016; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Docket L-39-16 is hereby upheld, and the appeal filed by Harihara and Parvathy Mahesh is denied.

//

//

Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this order.

DONE this 15th day of December, 2016 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

Unavailable for signature

BRIAN VAN BERGEN
County Clerk

By: Keri Hinton
Deputy ~~Lucy Flores Mendez~~
KERI HINTON

FORM APPROVED BY:

T. Sadlo
Timothy S. Sadlo
Senior Assistant County Counsel

(excused)
Chair _____ MARY STARRETT
[Signature]
Commissioner _____ STAN PRIMOZICH
[Signature]
Commissioner _____ ALLEN SPRINGER
[Signature]

**Exhibit A – Board Order 16-507
Findings in Support of Decision to
Uphold the Planning Director’s Approval
Of Docket No. L-39-16
And Conditions of Approval**

DOCKET NO.: L-39-16

REQUEST: An appeal of the Planning Director’s approval of a property line adjustment to exchange equal amounts of property between Tax Lot 5509-700 and Tax Lot 5510-1200. The resulting parcels will remain the same size as the existed prior to the adjustment: 29.98 and 6.74 acres.

APPLICANT: James and Susan Ruggles

APPELLANT: Harihara and Parvathy Mahesh

TAX LOTS: 5509-700 and 5510-1200

LOCATION: 15500 SW Dusty Drive, McMinnville

ZONE: EF-80, Exclusive Farm use District

CRITERIA: 402.09 (B)(2) of the Yamhill County Zoning Ordinance, and the Yamhill County Land Division Ordinance

FINDINGS:

1. YCZO §402.09 lists the standards and limitations that apply in the Exclusive Farm Use District. Subsection B, “Parcel Size and Dimension,” subsection (2), states:

“2. Lot-line adjustments. Any parcels subject to an alteration in size through a lot-line adjustment shall be shown to be of a size at least as appropriate to maintain the existing commercial agricultural enterprise in the area as were the parcels prior to adjustment. When one or more parcels subject to a proposed adjustment are larger than the minimum lot size in the zone, the same number of parcels shall be as large or larger than the minimum lot size after the adjustment. When all parcels subject to the proposed adjustment are as large or larger than the minimum lot size in the zone, no parcel shall be reduced below the applicable minimum lot size. The lot line adjustment shall not result in an increase in the potential number of dwellings on the parcels. When an area that contains an existing dwelling will be conveyed from one parcel (Parcel A) to the adjacent parcel (Parcel B), Parcel B must either receive land use approval for the dwelling under the terms of this ordinance, or, in the alternative, a deed affidavit shall be recorded by the owner of

Parcel A prohibiting the establishment of any new principal dwellings on the adjusted parcel or parcels.”

1.1 As demonstrated by the applicant, existing “Parcel #1” consists of two existing smaller parcels, totaling approximately 29.98 acres (Tax Lot 5509-700). It contains a dwelling and other outbuildings on its eastern edge, but contains only part of the driveway to the dwelling. A multi-purpose building associated with the dwelling, the remainder of the driveway to the dwelling, and the septic system for the dwelling are all contained on the existing “Parcel #2 (approximately 6.4 acres, Tax Lot 5510-1200).”

1.2 The applicant proposes to adjust the boundary between the existing Parcels #1 and #2, resulting in new Parcels #1 and #2, which will be the same size as the existing Parcels #1 and #2. The adjustment of the lot line will result in the dwelling, all outbuildings, the access driveway, the well and drainfield all being located on Parcel #2. Parcel #1 would then continue to be approximately 29.98-acres, with no dwelling or right to a dwelling, and would continue to be exclusively devoted to farm use.

1.3 Both parcels are currently below the minimum lot size in the District. Both adjusted parcels will continue to be “of a size at least as appropriate to maintain the existing commercial agricultural enterprise in the area as were the parcels prior to the adjustments,” because both parcels will be the same size that they are now. There is nothing about the new parcel shapes that diminish their appropriateness for commercial agriculture.

1.4 The adjustment will not result in an increase in the potential number of dwellings on the parcels—one dwelling exists, and no additional dwellings are authorized by this approval or otherwise allowed. A condition of approval requires that the owner record a deed affidavit prohibiting the establishment of any new principle dwellings on the new “Parcel #1,” unless it is combined with an adjacent parcel to meet or exceed the minimum lot size or the adjacent parcel so combined qualifies for a principal dwelling.

2. The Yamhill County Land Division Ordinance contains numerous submittal requirements, all of which have been, or will be, satisfied by the applicant prior to final approval. Section 7.020, entitled “Approval Standards,” contains four standards for approval, as follows:

“7.020 APPROVAL STANDARDS

1. All parcel sizes, property-line setbacks, and other dimensional attributes resulting from a lot-line adjustment shall conform to the provisions of this ordinance and the Zoning Ordinance or other ordinance. Conditions that existed legally prior to the application that do not conform to the ordinance provisions shall be allowed to continue.”

2.1 Both parcels existed legally prior to the application, and neither parcel will be reduced in size as a result of the lot-line adjustment. The adjustment will allow Parcel #1 to be more efficiently uses solely for agricultural purposes. Parcel #2 can also continue to be used for

agricultural purposes, and the existing dwelling, outbuildings, well, septic drainfield and access driveway will all be contained, within required setbacks, on a single parcel.

“2. Lot-line adjustments shall conform to the Comprehensive Plan and Official Map, any criteria of the Zoning Ordinance, and any state requirements of Oregon Revised Statutes chapters 92, 197, and 215.”

2.2 The county has not identified any Comprehensive Plan provisions that are standards applicable to the request, and none were identified by any party during the appeal proceedings. No zoning ordinance standards (other than the above referenced Section 402) apply, and no state law requirements were identified by the county or by any party that would be violated by approval of the requested Lot Line Adjustment. The adjustment is consistent with the Comprehensive Plan and Oregon law because: no zone change is requested; the existing agricultural uses will be maintained; no new residence is proposed or permitted by the adjustment; and because two existing parcels comprising a 29.98-acre tax lot tract will be consolidated into a single and more viable agricultural parcel. The requested adjustment will preserve viable farming parcels zoned EF-80 by preserving the tillable and planted acreage and agricultural viability of both parcels.

“3. A lot-line adjustment shall not result in the creation of a new lot or a replat of an existing subdivision or partition.”

2.3 No new lots are being created, and no existing partition or subdivision is being replated.

“4. All lots resulting from a lot-line adjustment shall have legal access to a public road pursuant to Sections 6.010 and 6.020.”

2.4 This standard was address specifically by the appellant the County Engineer. The applicant responded by noting that both parcels presently have legal access to Oldsville Road by way of Dusty Drive. Dusty Drive is a long-recognized private access roadway serving all parcels that it abuts. It is referenced in the 1972 Land Sale Contract from McDonald to Tapp (Attachment 1 in the applicant’s appeal submittal) as: “Together with a non-exclusive road easement on existing road, from County Road to above described tract” (emphasis added). Dusty Drive was, and remains, the current access to all three of the parcels comprising both tax lots. It was created by the recorded land sale contract during 1972, and became appurtenant to Tax Lots 5509-00700 and 5510-01200 by the Contract Fulfillment Warranty Deed from MacDonald to Tapp, dated September 9, 1991. It has been an appurtenant access roadway easement providing access to both tax lots since that time. Aerial maps showing the “existing road” to the applicant’s residence from the 1970’s, 1982-83 and 1994 were also submitted into the record by the applicant during the appeal hearing.

2.5 The County Engineer commented that the specific point or points of access to the reconfigured Parcel #1 were not noted on the preliminary lot line adjustment maps provided by the applicant. The applicant suggested, and the county agrees, to impose an additional condition of approval to require that the final lot line adjustment survey (or deed) specify to the satisfaction

of the County Planning Department the location(s) for access to Parcel 1 from either the “existing road” where it touches Parcel 1, or across Parcel 2. That condition has been added.

3. Findings in response to testimony received.

3.1 The appellants stated: “The Parcel has been split into two parcels.” The county finds that the application does not create a new parcel. The applicants currently own two legal lots comprising Tax Lot 5509-700 and one legal lot comprising Tax Lot 5510-1200. The lot line approval will reduce the number of legal lots to two.

3.2 The appellants stated: “There is no easement or plan for the second parcel.” The county finds that the existing parcels comprising Tax Lot 5509-700 currently have legal access across the existing deeded easement along the existing access roadway. The applicant indicated a willing to specify the points of access to the larger parcel in the final survey map and deeds to be approved by County Planning staff, and to communicate with the appellants in establishing the exact point of access. The point or points of access may either proceed from where the existing roadway easement touches the larger parcel, or from there across the smaller parcel, or both. A condition has been added requiring that the access point be specified in final plans presented to the county, prior to recording.

3.3 The appellants stated: “We are planning to use that area to plant grapes” (with regard to the apparent location of the point of access to Parcel #1). The county finds that the roadway easement through appellants property is a non-exclusive easement, which means that the appellants can also use the easement area in any way that does not obstruct the use of the easement for access to applicant’s property. Any obstruction of the easement roadway would be a matter for resolution in the Circuit Court. A tentative access entry to Tax Lot 5509-700, which the applicant began to install, mistakenly strayed from the easement roadway. Once that was pointed out, the applicants state that they apologized for the error and immediately removed that entry point. The appellants can plant grapes on any portion of their property that does not block the easement roadway, including any portion of their property lying westerly of the access roadway. The applicants indicated a willingness to work with the appellants to establish a point of access acceptable to all parties.

3.4 The appellants stated: “Before the parcels split there was one easement to Mr. Ruggles property from our property.” The county finds that, since this is not a partitioning action, the parcels are not being split. All three of the existing legal parcels currently have lawful access across the appellants’ property from the existing roadway easement. No new easement across the appellants’ property is being created by this lot line adjustment.

Conditions of Approval

The request in Docket L-39-16 for a property line adjustment to exchange equal amounts of property between Tax Lot 5509-700 and Tax Lot 5510-1200, resulting in two parcels that are the same size as prior to the adjustment (29.98 and 6.74 acres), is hereby approved, subject to the following conditions:

1. The resulting 6.74 acres shall be surveyed pursuant to Section 6.120 of the Yamhill County Land Division Ordinance and a copy of the survey shall be submitted to the Planning Director prior to final approval.
2. No additional lots or parcels shall be created from this property line adjustment.
3. The resulting vacant parcel (29.98 acres) shall not be eligible for the siting of a dwelling pursuant to Section 402.09(B)(2) of the Yamhill County Zoning Ordinance unless the parcel is combined with an adjacent parcel which qualifies for a principal dwelling. A deed affidavit shall be recorded by the owner prohibiting the establishment of any new principal dwellings on the adjusted parcel.
4. The adjusted property line shall be established in a location that ensures that any existing structures comply with the setback requirements of Section 402.09(C) the Exclusive Farm use District.
5. Pursuant to OAR 340-071-0220(1)(j), the property owners shall maintain a setback of 10 feet from any part of an existing drainfield when establishing new property lines or septic easements, which shall be surveyed and recorded in the deed and mortgage records maintained by the County Clerk.
6. A copy of the documents conveying the adjusted properties shall be submitted to the Planning Department prior to recording with the County Clerk. The names on the instrument(s) conveying the property shall be the same as they appear in the tax records of Yamhill County.
7. The documents conveying the adjusted properties shall either describe the readjusted lots in their entirety, or, if the instrument describes only that area being conveyed from one property to the adjoining property, the following statement shall be placed on the instrument:

This conveyance is made solely as an adjustment of common boundary between adjoining properties, and does not create a separate parcel that can be conveyed independently of adjacent land.
8. A 30-foot wide (minimum) nonexclusive easement for ingress and egress shall be established to provide access to Parcel #1 (29.98 acres), surveyed, and included in the deed(s) finalizing the adjustment.
9. Unless an extension is granted, the applicant has one year from the date of this Board Order, or from the date that all appeals have been resolved, without further appeal, to complete these requirements and to record the instrument of conveyance with the County Clerk. Otherwise, this approval shall become null and void.

END