



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Steve Wills, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.linncountyor.gov

NOTICE OF PENDING LAND USE ACTION

The following request has been submitted for review by this Department. Any comments you wish to provide must be received by 5:00 p.m. September 13, 2024. All comments will be appreciated; however, Oregon law requires that written comments specify which application criteria apply to submitted testimony.

APPLICANT NAME: Berry Drive LLC

LANDOWNERS: Same

FILE NUMBER / TYPE OF REQUEST: PD24-0231; application for a property line adjustment, pursuant to Linn County Code (LCC) Chapter 925, and an access review, pursuant to LCC Chapter 935.

LOCATION OF PROPERTY: The properties are located at 37798 Berry Drive, Albany, approximately 0.79 at the intersection of Berry Drive and Shady Bend Road, and approximately 0.39 miles east of the city limits of Millersburg. (T10S, R03W, Section 27, Tax Lots 204 and 200)

PLAN DESIGNATION/ZONE DESIGNATION: Agricultural Resource / Exclusive Farm Use (EFU)

URBAN GROWTH AREA/PLANNING AREA: Millersburg Planning Area

SUMMARY OF REQUEST: A property line adjustment application to adjust property lines between two properties resulting in tax lot 204 increasing in size from 2.84 acres to 3.60 acres and tax lot 200 decreasing in size from 63.51 acres to 62.75 acres. Also, an access review to create a 40-foot flag strip to serve tax lot 204. The purpose of this notice is to solicit comments and input from surrounding property owners and affected agencies regarding the applicable decision criteria (attached) so that the Department may make a final land use decision.

COMMENTS: [Blank lines for comments]

BY [Blank] AGENCY (IF ANY) [Blank] DATE [Blank]

ADDRESS: [Blank]

STAFF CONTACT PERSON: Alyssa Boles; (541)967-3816, ext.2360 or aboles@co.linn.or.us

Table with 3 main columns: Linn County, State of Oregon, and Other. Rows include various departments like Sheriff, DEQ, ODOT/OSHD, etc.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

1. Oregon law [ORS 215.416(5)] requires that local governments make copies of applicable decision criteria available to any participant in a land use hearing. This application will be reviewed, and a decision made, using the decision criteria listed below.

Sections 925.320(B), 925.330(B), and 935.150(B) of the Linn County Land Development Code contain the decision criteria specified for use with this application.

LCC 925.320(B) - Decision criteria: generally

(B) Decision criteria.

- (1) The property line adjustment, if approved, shall not create any additional units of land.
- (2) Except as otherwise authorized in paragraph (3), a property which meets or exceeds the minimum property size required by the zoning district shall not be reduced below the minimum property size.
- (3) A property which meets or exceeds the minimum property size in the UGA-UGM zoning district may be reduced below the minimum property size through a variance approved under this Development Code.
- (4) Subject to subsections (5) and (6), an authorized unit of land in non-resource zoning districts which does not meet the size standard of the zoning district may be further reduced in size by a property line adjustment.
- (5) The property line adjustment shall not
 - (a) reduce the property below the area and configuration needed to maintain water supply and an approved septic system.
 - (b) eliminate vehicular access for any of the properties unless an alternative access has been provided and approved.
 - (c) create building encroachments into specified setback areas. Where there is an existing encroachment, the adjustment shall not result in any greater setback encroachment unless a variance has been granted.
 - (d) cause an undeveloped property to become ineligible for an approved septic system.
 - (e) encroach the location of an existing or approved septic system unless:
 - (i) A repair area for an existing, off-site septic system can be identified by Environmental Health Program (EHP) and secured by the applicant through an easement;
 - (ii) The location of the off-site repair area is surveyed; and
 - (iii) An easement, together with the surveyed description of the off-site repair area, is recorded in the County Clerk's office with a copy of the recorded documents provided to EHP.
- (6) No width, depth, or frontage standard of any property that meets the standards required by the zoning district may, by a property line adjustment, fail to continue to meet the applicable standard unless a variance has been granted.

LCC 925.330(B) Decision criteria; Type IB property line adjustments

(B) Decision Criteria.

- (1) In the EFU and in the farm area of the F/F zoning district,
 - (a) No property less than 80 acres in size shall be reduced below the typical commercial farm field size set forth in LCC 925.130 (H). If a non-resource land designation or a non-resource dwelling designation has been applied to the subject property through a previous land use decision, the unit of land is no longer considered a commercial farm.
 - (b) If the subject property, to be reduced in size, is already smaller than the typical commercial farm field size set forth in LCC 925.130 (H) the property shall not be reduced below five acres. This limitation is necessary to retain an adequate buffer to protect the occupants of any existing or potential dwelling on the property from the normal practices associated with farm or forest uses of the surrounding and nearby properties.

- (2) In a forest area of the F/F or in the FCM zoning district, adjustments that would reduce the size of a less-than-80-acre property shall not reduce the property more than 10% of the existing acreage.
- (3) On land zoned EFU, F/F, or FCM, a property line adjustment may not be used to:
 - (a) Decrease the size of a lawfully established unit of land that, before the relocation or elimination of the common property line, is smaller than the minimum property size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling;
 - (b) Decrease the size of a lawfully established unit of land 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 another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling; or
 - (c) Allow an area of land used to qualify a lawfully established unit of land for a dwelling based on an acreage standard to be used to qualify another lawfully established unit of land 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 state waiver so that any lawfully established unit of land affected by the property line adjustment is larger than:
 - (i) Two acres if the lawfully established unit of land his high-value farmland, high-value forestland or within a ground water restricted area; or
 - (ii) Five acres if the lawfully established unit of land is not high-value farmland, high-value forestland or within a ground water restricted area.

935.150 - Decision Criteria: easement of road access

- (A) A request for easement of road access recognition may be approved if, on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all of the following decision criteria can be met:
 - (1) The proposed placement of the easement of road access shall not pose a traffic hazard, taking into consideration the number of nearby access points and geographic conditions of the property; and
 - (2) The easement of road access is the only reasonable method of providing access to the parcel.
2. All testimony and evidence must be directed toward the criteria described above or other criteria in the plan or land use regulations, which you believe, apply to the decision. Failure to raise an issue before the close of the record during the comment period/final evidentiary hearing, by letter or in person, or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal based on that issue.
3. Please note the deadline stated in the accompanying notice for submitting your written comments for decisions to be made by the Planning and Building Department.
4. If a public hearing is scheduled before either the Planning Commission or the Board of County Commissioners, written and/or oral comments may be submitted either before and/or during that hearing. Please note the time and date of the hearing in the accompanying notice.
5. A map(s) depicting the parcel under review and surrounding lands is attached to the notice.
6. A copy of the application, all documents and evidence submitted by or on behalf of the applicant and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost. For applications scheduled for public hearing, a staff report will be available for inspection at the

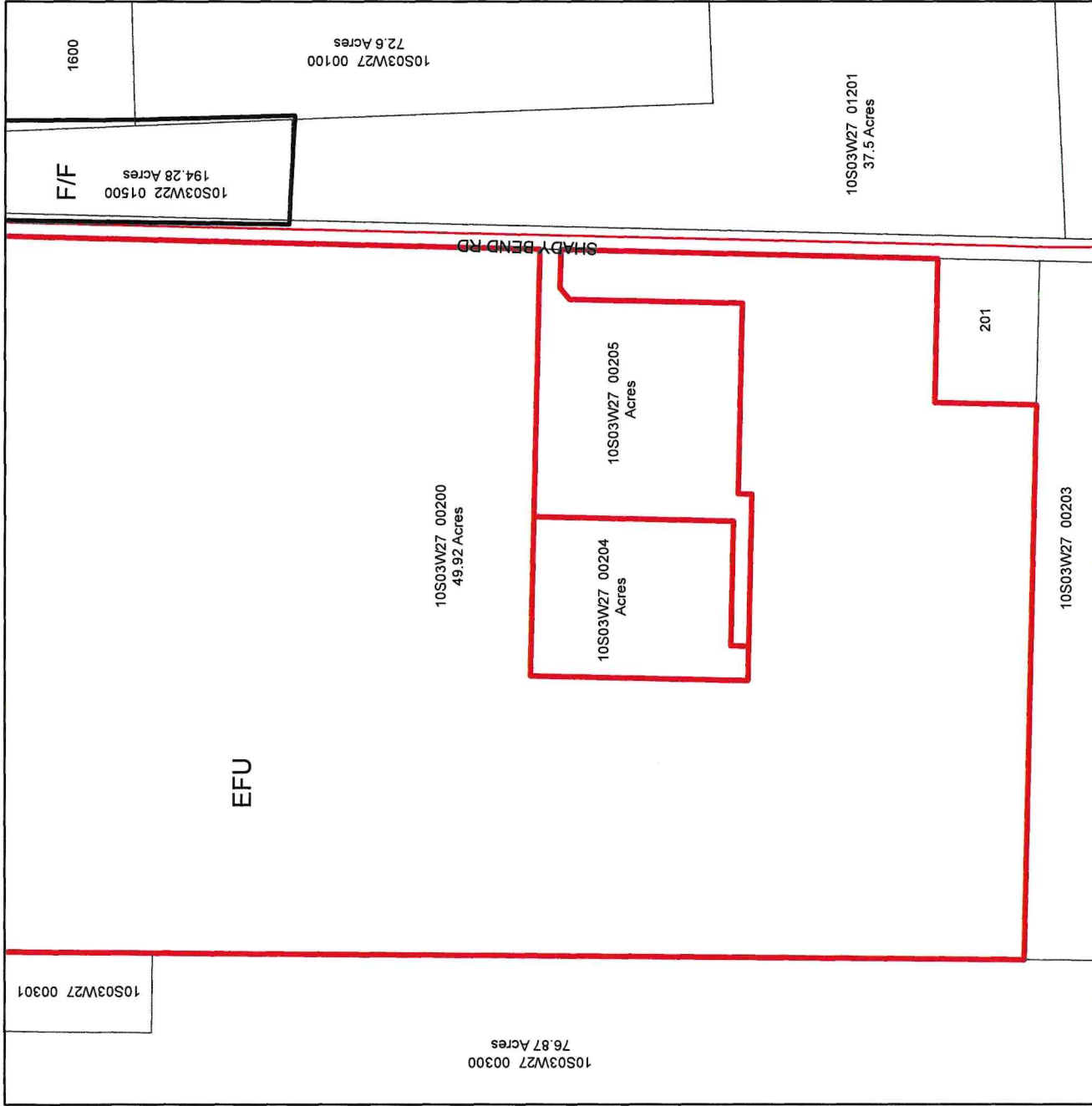
Department at least seven days prior to the hearing. A copy of the staff report will be provided at reasonable cost.

7. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the 150-day time limitations of ORS 215.428.
8. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The decision maker shall grant the request by either (a) continuing the public hearing or (b) leaving the record open for additional written evidence or testimony. If the decision maker grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the initial hearing.
 - (a) At the continued hearing, persons may present and rebut new evidence and testimony. If new written evidence is submitted, any person may request, prior to the close of the continued hearing that the record be left open for at least seven more days to submit additional written evidence or testimony to respond to the new written evidence.
 - (b) If the record is left open, it shall remain open for at least seven days. During the period the record was left open, any participant may file a written request with the local government for an opportunity to respond to new evidence submitted. If the record has been closed and such a request has been timely filed, the record shall be reopened. Unless waived by the applicant, the applicant shall have at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. **If the record is reopened to admit new evidence or testimony, any person may raise new issues, which relate to the new evidence, testimony or decision criteria for the application.** Except when requested or agreed to by the applicant, the extension shall be subject to the 150-day limitations of ORS 215.428.
9. Appeals from Departmental decisions result in a hearing before the Planning Commission; appeals from Commission decisions result in a new hearing before the Board of County Commissioners.
10. Testimony or evidence previously submitted to the Commission must be **resubmitted** by the parties to the Board for the new hearing.
11. If this case is scheduled for a public hearing, the hearing will begin with a declaration of any ex parte contacts (contacts which occurred outside of the public hearing) or any conflict of interest by the decision makers. This will be followed by the staff report from the planning department. Then the applicant will testify, followed by testimony by other people in support of the application. After the people who are in favor of the application are finished, testimony from opponents will begin. This will be followed by testimony from people who neither favor nor oppose the application. The applicant will then be given the opportunity for rebuttal. The decision makers are free to ask questions of any person who has testified or of staff at any point during the hearing.

If the hearing is continued or the record is left open, the chairperson will announce the date, time, and place for resumption of the hearing and/or what limitations exist on further testimony or submittal of written materials. If a site visit is warranted, the chairperson will announce the time and date of such a visit. If the hearing and record are closed, the decision makers will begin deliberations and/or will announce the time, date and place when the decision will be made.

Linn County Planning & Building Department

Notice Map



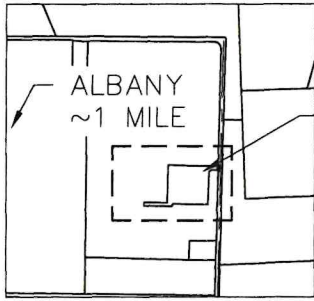
- Subject Properties
- taxlots
- Zoning
- roads

PD24-0231
BERRY DRIVE LLC
10S03W27 00204
10S03W27 00200



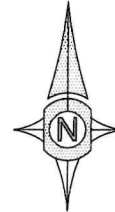
08/23/2024

CONTEXT MAP (NOT TO SCALE)



SUBJECT AREA

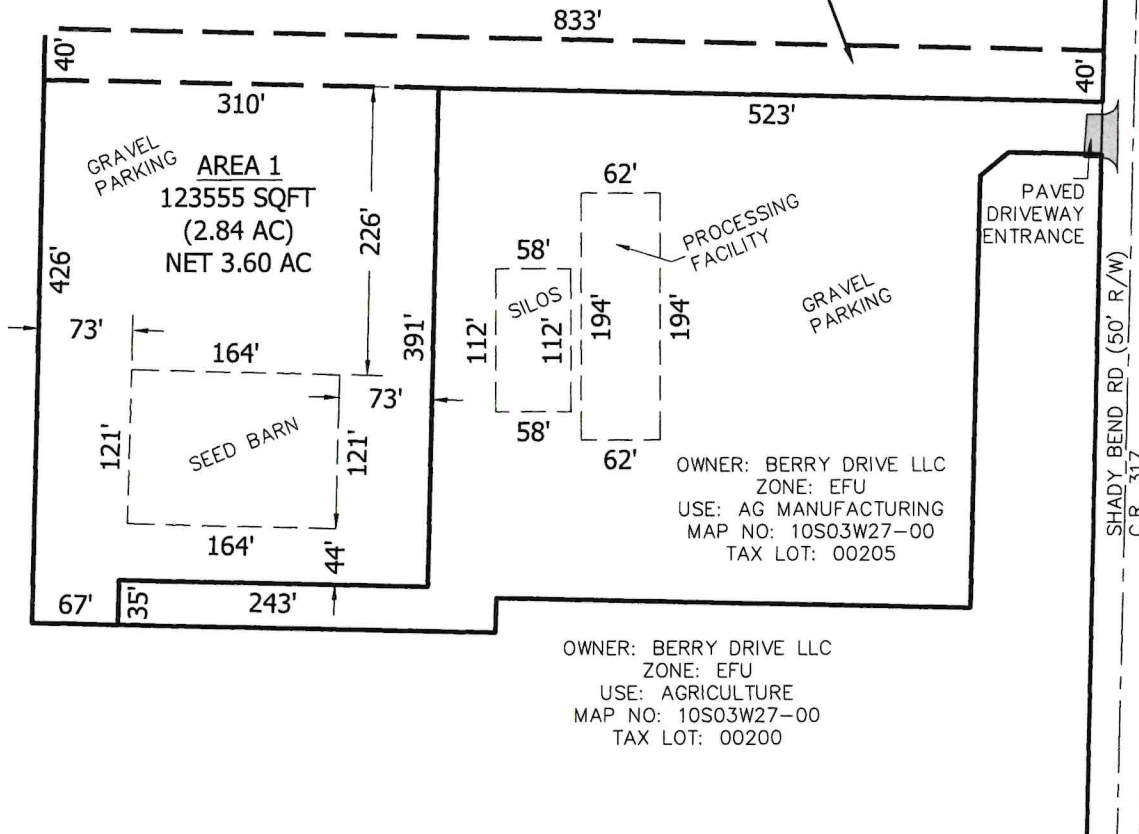
AREA 2
2733573 SQFT
(62.75 AC)
PARTIALLY UNSURVEYED



SCALE: 1" = 150'



TRANSFER AREA
33320 SQFT



PROPERTY INFORMATION

AREA 1
ZONING: EFU
LAND USE: AGRICULTURAL
OWNERS: BERRY DRIVE, LLC
ASSESSORS MAP: 10S-03W-27
TAX LOT: 00204

AREA 2
ZONING: EFU
LAND USE: AGRICULTURAL
OWNER: BERRY DRIVE, LLC
ASSESSORS MAP: 10S-03W-27
TAX LOT: 00200

LEGEND

R/W RIGHT OF WAY
CO COUNTY
RD ROAD
AC ACRES
C.R. COUNTY ROAD
NO NUMBER
SQFT SQUARE FEET

NOTE: NO SEPTIC OR WELL WITHIN
350' OF AREA 1 OR TRANSFER AREA

SHEET 1
of 1



Date 6/24/2024
Project 24-093
KROPP BERRY
Drawn by CJB
Checked by KWL

PRELIMINARY PLA
BARNEY KROPP
33798 BERRY DR NE
ALBANY, OR 97322

UDELL ENGINEERING
AND
LAND SURVEYING, LLC
63 EAST ASH ST.
LEBANON, OREGON, 97355
541-451-5125