



# ***Marion County*** **OREGON**

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### **MEMORANDUM**

**TO:** Marion County Hearings Officer

**FROM:** Marion County Planning Division/Reich

**DATE:** December 5, 2018

**SUBJECT:** Administrative Review 18-023/Minten and McLaughlan

The Marion County Planning Division has reviewed the above named case and offers the following comments:

### **FACTS:**

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and zoned SA (Special Agriculture). The intent of both the designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on the south side of State Street in the 5900 block. The parcel is undeveloped.
3. Surrounding properties to the east, south, and west are zoned SA and in a mixture of small scale farm use, woodlots, and residential uses. Property to the north is zoned I (Industrial) and developed with an industrial use.
4. Soil Survey of Marion County Oregon indicates 98% of the property is composed of high-value farm soils.
5. The applicant is proposing to establish a dwelling under the lot-of-record provisions in the SA zone. The property was previously approved for a lot-of-record dwelling through Administrative Review Case #96-88, but was never implemented.

### **STAFF FINDINGS AND ANALYSIS:**

6. Public Works Land Development and Engineering commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Building Inspection commented that building permits would be required for new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic permits are required.

Marion County Tax Assessor provided information regarding property taxes on the subject property.

7. Section 17.137.030(d) of the Marion County Code (MCC) allows a lot of record dwelling subject to meeting specific standards and criteria. These include:

(a) *The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:*

(1) *Since prior to January 1, 1985; or*

(2) *By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.*

(3) *“Owner”, as the term is used in this section only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.*

**The applicant states that Alma Minten, along with her husband, purchased the property by a land sales contract in 1982. The current owner of the property is their daughters, which meets the definition of owner above. This criterion is met.**

(b) *The tract on which the dwelling will be sited does not include a dwelling.*

(c) *The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, and no dwelling exists on another lot or parcel that was part of that tract.*

(d) *When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.*

**According to information provided by the applicant, since the property was purchased in 1982, it has never been part of the tract (adjacent property in the same ownership). The above criteria are met.**

(e) *The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this ordinance, including but not limited to floodplain, greenway, and big game habitat area restrictions.*

**The property is not in an identified big game habitat area, floodplain, greenway area, or in the Sensitive Groundwater Overlay. Portions of the property are located in an area identified on the National Wetlands Inventory. The applicant should determine if there are any wetlands present on the property and obtain any necessary permits from the Division of State Lands for development in a wetland. This can be made a condition of any approval. This criterion can be conditioned to be met.**

(f) *The proposed dwelling will not:*

(1) *Exceed the facilities and service capabilities of the area.*

(2) *Create conditions or circumstances contrary to the purpose of the Special Agriculture zone.*

**Applicant indicates the proposed dwelling will rely on an individual septic system and water will be provided by an exempt well. The property is served by Marion County Fire District #1 and all other needed rural services are available to the property. Applicant indicates that the placement of a dwelling on the property will be reflective of the current development pattern of the area which includes a mixture of SA and AR (Acreage Residential) zoned**

properties, many of which contain dwellings. The SA zone contains provision for placing a dwelling under the lot-of-record provisions. If all the other criteria can be met, the use will be in harmony with the purpose of the SA zone, and this criterion will be satisfied.

- (g) *A lot-of-record dwelling approval may be transferred by a person who has qualified under this section to any other person after the effective date of the land-use decision.*
- (h) *The County Assessor shall be notified that the county intends to allow the dwelling.*

**The criterion in (g) can be made a condition of approval. The County Assessor will be notified if this request is approved.**

- (i) *The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in Section 137.130 (d);or*
- (j) *The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.137.130(D)(2) or (3).*
- (k). *The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC 17.137.130(D)(1) and:*

**Approximately 98 percent of the soils on the parcel are Class II and IV, Amity, Dayton and Woodburn soils, which are defined as high-value in MCC 17.137.130(D)(1). The criteria that apply to these types of soils are:**

- (1). *The hearings officer determines that:*
  - i. *The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and*

**The applicant indicates that the parcel is 7.92 acres in size with the western half in trees and brush and bordering Willa Lake. The 3.5 acre portion of the subject property that is able to be farmed is leased to another farmer for management. Property to the north is in industrial use and the property to the south is developed with a dwelling that was approved as a lot-of-record dwelling in 1984. The property owner would face great expense trying to convert the unfarmed portions of the property to farm use by removing trees and brush. If a home site is approved on the parcel it could enable the owner to do some hobby farming where profit margins are not critical. This criterion is satisfied.**

- ii *The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and*

**There are no commercial farming operations to the north, west or south. To the east, a small amount of cultivated land exists on the adjacent parcel. The development standards in the zone should provide adequate buffer to mitigate any potential impacts. In addition, MCC 17.137.100(c) requires that a Declaratory Statement be recorded with the property deed because the subject property is in a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. This criterion is met.**

*iii The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:*

*(A) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;*

*(B) Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved under subsection D of this section and MCC 17.137.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;*

*(C) Determine whether approval of the proposed non-farm/lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

**A 2000 study area centered as much as possible on the subject property was created using county GIS mapping services. The analysis includes soil information, zoning, and tax assessor data. The applicant describes the steps taken in the analysis and how the conclusions were reached. The study concludes that the number of potential lot-of-record dwellings and non-farm dwelling is six. Due to the small number of potential dwellings, approval of this request should have very little, if any, impact on the stability of the land use pattern of the area. This standard is met.**

*(2) The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.*

**The Oregon Department of Agriculture will be notified if this request is approved.**

9. Marion County Land Development and Engineering identified there may be a 25 foot easement along the western property line. If this easement still exists, any development should remain outside the easement. This can be made a condition of any approval.

10. MCC 17.113.140 requires setbacks from certain streams and lakes:

*To prevent encroachment of potential hazards in the floodplain of natural waterways, particularly those not having a designated floodplain, and to permit or afford better light, air, vision, stream pollution control, and to preserve the natural scenic amenities and vistas along the streams in all zones, there shall be a special setback from open waterways for all structures, fill, and outdoor storage as provided herein:*

- A. *All septic tank, septic tank drain field, cesspool and pit privy disposal facilities shall meet State of Oregon Department of Environmental Quality (DEQ) standards.*
- B. *Outdoor storage, fill, and structures, with the exception of bank stabilization structures, dams, weirs, cable crossings, power poles, docks, bridges, culverts, and ramps and streets leading thereto, are prohibited within the following setback areas:*
  - 1. *Thirty feet from natural lakes of one acre or more, reservoirs of one acre or more, and from the following natural waterways more than 15 feet wide: Willamette River, Santiam River, North Fork of the Santiam, Butte Creek, and the Pudding River. (See Chapter 17.179 MCC, Greenway Management Overlay Zone).*
  - 2. *Twenty feet from all other perennial rivers and streams, and any portion of the rivers and streams in subsection (B)(1) of this section that are less than 15 feet in width.*
- C. *All measurements are horizontal and perpendicular from the line of nonaquatic vegetation, or the ordinary high waterline, whichever is furthest from the waterway.*
- D. *Where the combination of setbacks required in the applicable zone and the stream setback result in a buildable lot depth of less than 50 feet an adjustment to the stream setback or the setback requirements of the applicable zone may be granted provided the adjustment is the minimum necessary to accommodate the proposed structure.*

There is a nearby lake adjacent to the property of approximately 3 acres, Willa Lake. It can be made a condition of approval that any development be placed a minimum of 30 feet from Willa Lake.

11. Based on the above facts and discussion, it appears the proposal meets all of the criteria and standards and criteria for placement of a lot-record-dwelling. If the hearings officer approves the request, the planning division recommends the following conditions of approval be applied:

- A. This decision is valid only when exercised within four years of the date the decision becomes final unless an extension is granted. The effective period may be extended for subsequent two year periods subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).
- B. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
- C. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

- D. This lot-of-record dwelling approval may be transferred **one time only** by a person who has qualified under this decision to any other person after the effective date of the land-use decision.
- E. The applicant should determine if there are any wetlands present on the property and obtain any necessary permits from the Division of State Lands for development in a wetland.
- F. Any development shall remain outside a 25 foot easement along the western property line, if such an easement exists.
- G. Any development shall maintain a 30 foot setback from Willa Lake consistent with MCC 17.113.140.