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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Reich
DATE: April 27, 2018
SUBJECT: Conditional Use 18-029/Magana

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

FACTS:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located at 13581 Wilco Highway NE, Woodburn. The property contains a dwelling, garage, sheds, well and septic system. The property was subject to a previous land use decision (Conditional Use 01-67) for a hardship dwelling, which has since been removed. The parcel is, therefore, considered to have been legally created.
3. All surrounding properties are zoned EFU and in various types of farm use.
4. Soil Survey of Marion County Oregon indicates 100% of the property is composed of high-value farm soils.
5. The applicant is proposing to operate a landscaping business in conjunction with a nursery on the subject property. The business has been in place for some time operating without land use approval; this permit would remedy that.

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 permits would be required for change of occupancy.

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

Oregon Department of Transportation commented that a permit would be required for driveway access off Wilco Highway. Contact Gerry Juster at the Oregon Department of Transportation for more information: (503) 986-2732.

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

Marion County Code Enforcement commented that there is a code enforcement case open on the property for operating a landscape business on the property without the proper permit and that solid waste is present on site.

7. Chapter 17.136.050 (D) (6) of the Marion County Code (MCC) permits, in an EFU zone, a landscape contracting business as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

ORS 671.520 (2) defines a "Landscape contracting business" as a business that for compensation or with the intent to be compensated arranges, submits a bid, or otherwise offers or contracts, for the performance of activities described in subsection (1) of this section. Subsection (1) defines a (1) "Landscape construction professional" means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:

- (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
- (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
- (c) Construct or repair ornamental water features, drainage systems or irrigation systems;
- (d) Maintain irrigation systems with the use of compressed air; or
- (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

8. The applicant provided a copy of both the Landscape Contractor's Board license for a Landscape Contracting Business and Oregon Department of Agriculture's nursery stock grower's license. A site visit to the property identified approximately 400 square feet of nursery stock in pots on the property. In addition, nursery stock appeared to be growing in a greenhouse of approximately 300 square feet. Based on the amount of land dedicated to the nursery operation, there does not appear to be a commercial nursery operation on the property. The landscaping business must be in conjunction with a nursery operation. Since there is no nursery operation, the landscaping business cannot be approved. This criterion does not appear to be met.

9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:

- (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.*

The proposal is being done in conjunction with the growing of nursery stock on the property, which is a farm use. No additional land will be taken out of production from farming because of this use and the use of the property is taking place near Wilco Highway, outside of the area on the

property being farmed in clover. It appears that this use will not raise the cost of farming in the area. It can be made a condition of approval that the applicant records a Farm/Forest Declaratory Statement acknowledging farm and forestry uses in the area that could have an impact on the ability of this business to operate. As conditioned, this criterion appears to be met.

(b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The property is served by the Mt. Angel Fire District and law enforcement is provided by Marion County. Other services necessary for the business, such as well and septic, are available on the property. The applicant will have to obtain any driveway permits necessary to operate the business, ensuring that there is adequate capacity of the roadway network to serve the use. This criterion appears to be met.

(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.*

The nursery stock buildings and outdoor nursery area are located near Wilco Highway. There are no identified wetlands, streams, wildlife habitat areas, or geological hazards identified on the property and, therefore, the proposal will have little or no impact on these resources. The scale of the landscaping business should not affect air quality. This criterion appears to be met.

(d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

There is no evidence in the record indicating that noise generated by the proposal will be heard off the property or have any impact on surrounding uses. This criterion appears to be met.

(e) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

The surrounding area is not identified as a potential water impoundment area in the Comprehensive Plan, and there are no current or proposed significant mineral and aggregate sites in the area. This criterion appears to be met.

10. The property is currently under enforcement for possible land use violations. Marion County Code 17.110.680 states the following:

“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, or is being used or has been divided in violation of the provisions of this ordinance unless issuance of the permit would correct the violation.”

The landscape business is operating on the property without land use approval and issuance of this permit would resolve the outstanding violation; therefore, the county can approve the landscape business consistent with MCC 17.110.680.

However, there is also solid waste present on site which must be removed. Issuing a permit to operate a landscape business will not resolve the solid waste violation. Until that violation is resolved, planning cannot recommend approval of the permit for a landscape business.

11. Based on the above facts and discussion, it appears the proposal does not meet all of the criteria for conditional use approval for a landscaping business in conjunction with a nursery and Planning recommends it be approved. Regardless, planning cannot recommend approval of the permit for a landscape business until outstanding code violations are confirmed by Code Enforcement to have been resolved. If the applicant demonstrates those code violations are resolved and this permit were approved, planning suggests the following conditions of approval be applied:
- A. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
 - B. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) 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.
 - C. The applicant shall continuously operate the landscape contracting business in conjunction with the growing and marketing of nursery stock on the subject property and shall maintain current licenses to operate a nursery and landscape contracting business.
 - D. No yard debris or other decomposable materials shall be brought in from offsite and stored, disposed of, or used as fill.
 - E. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.
 - F. The applicants should contact Mt. Angel 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.
 - G. The applicant shall obtain from the Oregon Department of Transportation a permit for any driveway access off Wilco Highway or for work in the Wilco Highway right-of-way.