



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 25, 2020

Department: Public Works Agenda Planning Date: Nov. 19 2020 Time required: 5 min.

Audio/Visual aids

Contact: Lindsey King Phone: 503-566-4162

Department Head Signature: Bio Still

TITLE Consider adoption of an administrative ordinance granting Zone Change/ Comprehensive Plan (ZC/CP) Case 20-003/M. F. Bakke Builders, Home Exit LLC, 25 Years LLC, Jean M. Miller Family Trust and Harlan R. Miller Trust.

Issue, Description & Background The Marion County Hearings Officer held a duly noticed public hearing on this application on August 13, 2020, and on September 22, 2020, issued a report recommending the board approve the request, subject to a condition. The board held a duly noticed public hearing on the application on October 21, 2020 and considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and is otherwise fully advised in the premises and approved the request. The ordinance and findings have been prepared and the matter needs to be scheduled for final consideration. The ordinance and findings have been prepared and notice of adoption was given on November 18, 2020. The administrative ordinance is now set for formal adoption.

Financial Impacts: None

Impacts to Department & External Agencies None

Options for Consideration: 1. Adopt the ordinance. 2. Direct staff to prepare a modified ordinance. 3. Choose not to adopt the ordinance at this time.

Recommendation: Staff recommends the board adopt the attached ordinance as written.

List of attachments: Ordinance

Presenter: Lindsey King

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Lindsey King - lking@co.marion.or.us Joe Fennimore - gfennimore@co.marion.or.us

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the Application of:)
M.F. Bakke Builders LLC, Home Exit LLC,)
25 Years LLC, Jean M. Miller Family Trust,)
and Harlan R. Miller Trust)

Case No. ZC/CP20-003

Clerk's File No. 5811

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of M.F. Bakke Builders LLC, Home Exit LLC, 25 Years LLC, Jean M. Miller Family Trust and Harlan R. Miller Trust, to change the zone from SA (Special Agriculture) to C (Commercial) and change the Comprehensive Plan Designation from Primary Agriculture to Commercial on a 21 acre property located in the 5695-5775 Gaffin Road, Salem (T8S; R2W; Section 4C; tax lots 800, 1100, 1101, 1200, 1300, and 1401).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on August 13, 2020. On September 22, 2020, the Hearings Officer issued a report recommending the Board approve the request, subject to a condition. The Board held a duly noticed public hearing on the application on October 21, 2020 and considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Conclusions of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Special Agriculture to Commercial is hereby **GRANTED**. The requested zone change from SA (Special Agriculture) to C (Commercial) is hereby **GRANTED**, subject to the condition identified in Exhibit B, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____, 2020, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:)	Case No. ZC/CP 20-003
)	
M.F. Bakke Builders, Home Exit LLC,)	ZONE CHANGE/COMPREHENSIVE
25 Years LLC, Jean M. Miller Family Trust)	PLAN AMENDMENT
and Harlan R. Miller Trust)	

RECOMMENDATION

I. Nature of the Application

This matter came before the Marion County hearings officer on the application of M.F. Bakke Builders, Home Exit LLC, 25 Years LLC, Jean M. Miller Family Trust, and Harlan R. Miller Trust, to change the zone from SA (Special Agriculture) to C (Commercial) and change the Comprehensive Plan Designation from Special Agriculture to Commercial, with an Exception to Goal 3 (Agricultural Lands) on 21 acres located at 5695-5775 Gaffin Road SE, Salem (T8S; R2W; Section 4C; Tax Lots 800, 1100, 1101, 1200, 1300, and 1400).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code (MCC), title 17, especially MCC 17.123, 17.137, and 17.145; the Marion County Comprehensive Plan (MCCP), especially the Rural Development Policies, the Rural Commercial Policies, and the Agricultural Lands Policies; and the Statewide Land Use Planning Goals, particularly Goal 3 (Agricultural Lands) and associated Oregon Administrative Rules Division 4.

III. Hearing

A public hearing was held on the application on August 13, 2020. At hearing, the Planning Division file was made part of the record. The following persons appeared in person and provided testimony:

- | | | |
|----|--------------|----------------------------|
| 1. | Lindsey King | Planning Division |
| 2. | John Brosy | Applicant's Representative |

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No exhibits were entered into the record at hearing. At the conclusion of the public hearing, the record was closed.

IV. Executive Summary

Applicants request a zone change from SA to C and a Comprehensive Plan Designation change from Special Agriculture to Commercial on a 21-acre property located at 5695-5775 Gaffin Road SE, Salem. Applicant has satisfied the relevant approval criteria, and the hearings officer recommends **APPROVAL** of the proposal.

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V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. Application of M.F. Bakke Builders, Home Exit LLC, 25 Years LLC, Jean M. Miller Family Trust, and Harlan R. Miller Trust (Gaffin Road Group) to change the zone from SA (Special Agriculture) to C (Commercial) and to change the Comprehensive Plan designation from Special Agriculture to Commercial on 21 acres, located at 5695-5775 Gaffin Road SE, Salem (T8S; R2W; Section 04C; tax lots 800, 1100, 1101, 1200, 1300 and 1400).
2. The property is located on the north side of North Santiam Highway (SR22) approximately 1,200 feet north east of the intersection with Deer Park Drive SE.
3. Property directly to the east is zoned C (Commercial), property to the north east is zoned SA (Special Agriculture) all other adjacent parcels are located within Salem city limits and developed with industrial uses.
4. Marion County Public Works Land Development and Engineering Permits (LDEP) provided the following comments:

LDEP requested that the following condition be included:

Engineering Condition

- A. Prior to issuance of building permits, evidence of City of Salem access coordination will be required.
- B. An Erosion Permit for ground disturbances ranging between 1 to 5 acres and/or within 50 feet of the mapped drainage way traversing the site will be required from MCPW Engineering. Beyond 5 acres of impact, DEQ is the governing jurisdiction.
- C. Commercial development on the site requires submission of a civil engineered site plan for review and approval.
- D. Stormwater detention and treatment will be required for development exceeding 0.5 and 1.0-acre thresholds, respectively.
- E. Transportation System Development Charges (SDCs) are assessed upon application for building permits. Credit may be given for prior allowed uses.
- F. City of Salem is the permitting authority for access and utility work on Gaffin Road.
- G. The site lies between Fruitland Creek and the West Middle Fork Little Pudding River (WMFLPR). An unnamed yet mapped tributary traverses TLs 1200, 1300 and 1400. DSL/ACOE is the presumed regulatory agency pair having jurisdiction over potential impacts to the tributary.

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- H. County GIS mapping shows an NWI wetland pond on TLs 1300 and 1400. Wetland delineation is recommended prior to development. Evidence of DEQ coordination will be required, as necessary.

The City of Salem's Assistant Traffic Engineer responded: The City recommends placing a trip cap on the proposed Comprehensive Plan Change/Zone Change that limits the development to 448 daily trips or 55 pm peak hours trips identified in Table 3 of the TIA.

Marion County Fire District 1 submitted code requirements that are necessary for approval. Those comments can be found in the file.

All other contacted agencies either failed to respond or stated no objection to the proposal.

VI. Additional Findings of Fact and Conclusions of Law

1. This is a recommendation to the Marion County Board of Commissioners (the Board). The Board is the final decision making authority.
2. Applicant has the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, Applicant has not met its burden and the application must be denied. If the evidence for every criterion is in Applicant's favor, then the burden of proof is met and the application must be approved.

3. There is no opposition to the application. I have reviewed the staff report, and I agree with the findings and conclusions in the staff report. The following findings and conclusions are drawn largely from the staff report.

STATEWIDE PLANNING GOALS

4. The MCCP plan amendments section states that comprehensive plan amendments must be consistent with statewide planning goals.

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- Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.
- Goal 2: Land use Planning. The subject application to amend the Comprehensive Plan is considered under the regulations for this goal.
- Goal 3: Agricultural Lands. The applicant is proposing an exception to this goal. If approved this goal does not apply.
- Goal 4: Forest Lands. The subject property has not been determined to be forest land. This goal does not apply.
- Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property other than one small wetland area and a perennial stream that will not be disturbed if the property is developed.
- Goal 6: Air, Water and Land Resources Quality. The subject property is not within an identified air quality area. The property is not located in the Sensitive Groundwater Overlay Zone. No activities have been proposed on the property that would use significant amounts of groundwater. Any single commercial use of water using less than 5,000 gallons per day is exempt from water right permitting requirements of the Oregon Department of Water Resources, as long as the water is used for a “beneficial purpose without waste” and may be subject to regulation in times of water shortage.
- Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
- Goal 8: Recreation Needs. No Goal 8 resources are identified on the property. This goal does not apply.
- Goal 9: Economic Development. Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal.
- Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- Goal 11: Public Facilities and Services. The subject parcels do not require an extension of services with a C (Commercial) zone use, this goal is met.
- Goal 12: Transportation. Were the rezone granted to Commercial, the existing development will not have a significant impact on the roadway system in this area because of the minimal number of trips associated with the existing uses

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and the adequacy of the roadway to accommodate the probable level of additional traffic.

- Goal 13: Energy Conservation. There is no indication of energy use increase or decrease based on the proposed zone change and comprehensive plan change. This goal does not apply.
 - Goal 14: Urbanization. The Applicant is proposing to rezone rural residential land to Commercial outside of the urban growth boundary. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.
5. Applicant has proven that all applicable Statewide Planning Goals except for Goal 3 are met. The Applicant is seeking an exception to Goal 3.

GOAL 3 EXCEPTION

6. Land use applications of this nature must be consistent with Statewide Planning Goals. In this specific case, the subject parcel is covered by Statewide Goal 3 (Agriculture Land). There is a mechanism, however, for not applying the Goal to areas with certain characteristics. This mechanism is the Goal exception process that requires specific findings justifying why such lands are not available for resource use. There are three types of exceptions to Statewide Goals that may be granted. The first two are based on the concept that the subject property is “physically developed” or “irrevocably committed” to a certain use. The third is a “reasons” exception where there is a demonstrated need for the proposed use or activity. In this case, the Applicant indicated that the proposal qualifies for an irrevocably committed and physically developed exception.
7. OAR 660-004-0018(2) requires that “physically developed” and “irrevocably committed” exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
- A. That are the same as the existing land uses on the exception site;
 - B. That meet the following requirements:
 - i. The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and
 - ii. The rural uses, density, and public facilities and services will not commit adjacent or nearby resource uses to non-resource use as defined in OAR 660-004-0028; and
 - iii. The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

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- C. For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, 'Planning and Zoning of Unincorporated Communities', if applicable, or
 - D. That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.
8. Some of the subject properties are currently developed. It is not within an unincorporated community and is not in industrial use. Marion County has adopted a rural commercial zone which has been acknowledged as complying with Goal 14, Urbanization. The zone ensures that rural uses will not exceed density limitations on rural land and will not commit rural uses to requiring an urban level of public facilities. The commercial uses which would be allowed under the county's Commercial zone would be able to be supported on solely a rural level of public services, including rural septic service, and would be similar to the types of uses found in the surrounding land to the east, which is zoned Commercial. While there are parcels in the north and eastern area that are zone Special Agriculture, because of the existing development in the immediate area, most of the properties in the immediate vicinity are residential /commercial and are not being farmed. The property cannot be farmed in conjunction with any other parcels in the area. No urban public services will be needed to serve the site. The parcels in the area already consist of properties in commercial or residential use. Based on the evidence and findings provided by the Applicant and summarized here, the proposal meets the criteria for a goal exception.
9. OAR 660-004-028 specifies that a local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make the uses allowed by the applicable goal impracticable. It further stipulates that whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent. The findings for a committed exception therefore, must address the following:
- A. The characteristics of the exception area;
 - B. The characteristics of the adjacent area and the lands adjacent to it; and
 - C. The relationship between the exception area and the lands adjacent to it; and
 - D. The other relevant factors set forth in OAR 660-04-028(6).

OAR 660-004-028(6) referenced above indicates that findings of fact for a committed exception shall address the following factors:

- A. Existing adjacent uses;

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- B. Existing public facilities and services (water and sewer lines, etc.);
- C. Parcel size and ownership patterns of the exception area and adjacent lands:
 - i. Consideration of parcel size and ownership patterns shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground utilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for non-farm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.
 - ii. Existing parcel sizes and contiguous ownership shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.
- D. Neighborhood and regional characteristics;
- E. Natural or manmade features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;
- F. Physical Development according to OAR 660-004-025; and
- G. Other relevant factors.

10. The Applicant argues that the exception area is characterized by existing development that is not being farmed due to soils and topography. No immediately adjacent parcels

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except one to the far west (inside city limits) are in farm production. The properties are bordered to the north and east by smaller single family dwelling lots not in farm use and to the south by State Highway 22.

All of the approval criteria for a physically developed and irrevocably committed exception are met.

COMPREHENSIVE PLAN AMENDMENT

11. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.
12. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer property owners will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of six tax lots with no more than four property owners, all having an existing use, the proposal is considered under the quasi-judicial amendment process.
13. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The goals and policies that apply in this case are located in the Rural Development Chapter and include policies for areas designated Commercial:
 - A. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.
 - B. Rural industrial, commercial, and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.
14. No strip-type development is proposed. The majority of the parcels are currently developed and any additional development would not be expected to have any additional impact on surrounding agricultural and rural residential lands. The Applicant did not show any proposed development on the site plan, but indicated that the proposal will expand an existing commercial node rather than create a "strip-type" development. Gaffin Road is a paved City of Salem road therefore access is granted and controlled by the City of Salem. Currently there are established commercial uses located on several subject parcels, with no proposed new development. Therefore, no additional traffic would be expected to use Gaffin Road which would not be expected to impact rural residential and agricultural uses of adjacent properties.

Applicant has proven that all applicable MCCP policies are met.

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ZONE CHANGE

15. Under MCC 17.123.060, approval of a zone change application or initiated zone Change shall include findings that the change meets the following criteria:
 - A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
 - B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
 - C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
 - D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
 - E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

16. The Commercial zone is the only zone that implements the rural Commercial designation in the Marion County Comprehensive Plan (MCCP). The MCCP policies that address designating property as Commercial were addressed earlier and the proposal is in compliance based on the evidence presented in the goal exception section of this report. The proposal is consistent with surrounding uses that comprise commercial, residential, and quasi-public uses on surrounding lands. Based on the information submitted by the Applicant, the criteria for a zone change are satisfied by the proposal.

Applicant has satisfied all MCC 17.123.060 requirements and zone change approval is recommended.

VII. Recommendation

It is hereby found that Applicant has met the burden of proving that criteria for a zone change from SA to C and a Comprehensive Plan Designation change from Special Agriculture to Commercial have been met. The hearings officer recommends **APPROVAL** of the proposal, with the following condition:

1. A trip cap limiting development to 448 daily trips or 55 pm peak hour trips as identified in Table 3 of the Traffic Impact Analysis.

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VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The planning division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 22nd day of September, 2020.

A handwritten signature in cursive script, appearing to read "Fred Wilson", written over a horizontal line.

Fred Wilson
Marion County Hearings Officer

EXHIBIT A

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Agencies Notified:

John L. Brosy
Consultant, Gaffin Road Group
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Salem, OR 97301

Mary F. Bakke
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Salem, OR 97317

Richard Kansky
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City of Salem:
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AAC No. 3 (no members)

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 22nd day of September, 2020, and that the postage thereon was prepaid.


Susan Hogg
Administrative Assistant to the
Hearings Officer

EXHIBIT B

The Marion County Board of Commissioners adopts the following condition in ZC/CP 20-003:

1. A trip cap limiting development to 448 daily trips or 55 pm peak hour trips as identified in Table 3 of the Traffic Impact Analysis.

EXHIBIT C

The following described properties are rezoned from SA (SPECIAL AGRICULTURE) to C (COMMERCIAL). ZC/CP20-002/M.F. Bakke Builders, Home Exit LLC, 25 Years LLC, Jean M. Miller Family Trust, and Harlan R. Miller Trust

