

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of: ) Case No. AR 24-019  
 )  
SHARON K. VAUGHN ) **ADMINISTRATIVE REVIEW**

**ORDER**

**I. Nature of the Application**

This matter came before the Marion County Hearings Officer on the application of Sharon K. Vaughn to place a lot of record dwelling on a 25.53-acre parcel in the EFU (Exclusive Farm Use) zone located in the 14000 block of Wilco Hwy NE, Woodburn (T5S; R1W; Section 21; Tax lot 1100).

**II. Relevant Criteria**

The standards and criteria relevant to this application are found in the Marion County Code, specifically MCC 16.136.030(E).

**III. Public Hearing**

A public hearing was held on the application on October 3, 2024. At the hearing, the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- |    |                |                                 |
|----|----------------|---------------------------------|
| 1. | Austin Barnes  | Marion County Planning Division |
| 2. | Norman Bickell | Applicant’s Representative      |

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

**IV. Executive Summary**

Applicant seeks to place a lot of record dwelling on a 25.53-acre parcel in the EFU (Exclusive Farm Use) zone located in the 14000 block of Wilco Hwy NE in Woodburn. The property was purchased by Applicant’s parents in 1975. The property is currently vacant, but at one time, had a dwelling with a well, electricity, and has access directly onto the Wilco Highway. The property is in a 100 Year flood plain and high water during the winter months limits the ability to farm. Applicant has submitted the application for a lot of record dwelling, and if approved, Applicant can apply for a floodplain permit. Applicant meets the criteria for a lot of record dwelling, and the application is **APPROVED**.

## 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. The subject property is located on HWY 214, approximately 0.60 miles east of its intersection with Koener Rd NE. The property is bordered on three sides by the Pudding River and is entirely within the 100-year floodplain. The property is currently vacant and not in farm use or any other use. The parcel was the subject of Floodplain Development Permit FP 80-009 and is therefore considered legal for land use purposes.
3. Adjacent properties in all directions are zoned EFU and are in active farm use. Many of these parcels have dwellings and range in size from a few acres to over 100 acres.
4. Marion County Soil Survey shows the subject parcel having 96.3% high value soils consisting of:

SOIL NAME	SOIL TYPE	SOIL CLASS	HIGH VALUE	SOIL PERCENT	SOIL ACRES
Chehalis silty clay loam	Ch	1	Yes	40.90%	10.2
McBee silty clay loam	Mb	2	Yes	29.00%	7.2
Newberg fine sandy loam	Nu	2	Yes	6.70%	1.7
Wapato silty clay loam	Wc	3	Yes	19.40%	4.8
Water	W		No	3.90%	1

5. Marion County Planning requested comments from various governmental agencies, and received the following responses:

Marion County Land Development, Engineering, and Permitting (LDEP) requested the following be included:

### ENGINEERING REQUIREMENTS

- A. The subject property will be assessed Transportation System Development Charges (TSDCs) and Parks fee upon application for building permits.

### ENGINEERING ADVISORIES

- B. ODOT has jurisdiction over Wilco HWY (SR 214) for driveway access and utility service extension work.

Marion County Building Inspection commented: "Permit(s) are required to be obtained prior to development and/or utilities installation on private property. If the home is located within

the 100-year floodplain as determined by the Marion County Floodplain Administrator, then additional construction materials and/or methods may be required to be implemented into the home.”

Marion County Septic Division commented: “A Site Evaluation is required to determine site suitability for an onsite system.”

Woodburn Fire Department commented: “Items including fire department access and water supply will be required per the Oregon Fire Code at the time of development.”

Oregon Department of Transportation (ODOT) commented: “We have reviewed the proposal and have no issues with the dwelling. If the applicant needs to occupy right-of-way for utility work, please contact District Permits at 503-986-5831.”

All other agencies either failed to comment or stated no objections to the proposal.

## **VI. Additional Findings of Fact and Conclusions of Law**

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(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).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants have not met their burden and the application must be denied. If the evidence for every criterion there's a hair or breath in applicant's favor the burden of proof is met and the application is approved.

2. Sharon K. Vaughn signed the administrative Review Application and is the owner of the subject property as evidenced by the Bargain and Sale Deed, recorded on February 22, 2017, at Reel 3914, Page 334.

### LOT OF RECORD DWELLING CRITERIA FOR SPECIAL AGRICULTURE ZONE

3. Section 17.136.030(E) of the Marion County Code (MCC) allows a lot of record dwelling subject to meeting specific standards and criteria. These include:

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

- (a) *Since prior to January 1, 1985; or*
- (b) *By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.*
- (c) *“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 parcel was originally purchased by Applicants parents, Raulin and Carolyn Capri, in 1975. A floodplain permit was approved for Mr. and Mrs. Capri, but it was not exercised. However, the issuance of a permit indicates that the lot was recognized by Marion County as a legal lot. Since 1975, the property has either been owned by Raulin and Carolyn Capri or in a trust for the Capri family. Applicant Sharon Vaughn is the daughter of Raulin and Carolyn Capri. The criterion is met.

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

The subject parcel did have a dwelling but it is no longer on the property, and the parcel does not currently contain a dwelling. The criterion is met.

- (3) *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.*

The subject parcel was not in 1997 part of a tract and has not been a part of any tract. The Applicant does not own any adjacent parcels. The criterion is met.

- (4) *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.*

This criterion will not apply because the subject parcel is not a part of a tract and the Applicant does not own any contiguous parcels. The criterion does not apply.

- (5) *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 subject property is zoned EFU, is located within a floodplain, and future development will be subject to FEMA floodplain regulations as stated in the Application. The subject property and proposed dwelling will comply with the provisions of the EFU zone, which implement the standards of the Primary Agriculture designation in the Marion County Comprehensive Plan. The criterion is met.

(6) *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 acknowledges that the proposed dwelling would rely upon a well and septic to provide water and sewer services. This will require permitting through Marion County Septic and the Oregon Department of Water Resources. The property is not within the Sensitive Groundwater Overlay. An exempt well will have to be established and according to the State Water Resources, no water right will be needed for the well.

The parcel is served by the Woodburn Fire Department and the Marion County Sheriff's Office. Wilco HWY (SR 214) is a state jurisdiction road that this parcel has legal access from. Oregon Department of Transportation (ODOT) has not commented with any concerns regarding the road or access.

Rural services are available to the site.

The purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. It is intended to be applied in those areas composed of tracts that are predominantly high-value farm soils. This is an accurate description of the area around the subject parcel.

Lot of record dwellings are a permitted use subject to standards in the EFU zone, subject to standards being addressed in these criteria. If all criteria of MCC 17.136.030(D) are met, the proposed lot of record dwelling would not create conditions or circumstances contrary to the purpose of EFU zone. The criterion is met.

(7) *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.*

Applicant acknowledges this criterion and will comply with the condition. The criterion is met.

(8) *The County Assessor shall be notified that the county intends to allow the dwelling.*

The applicant acknowledges this criterion and it shall be a condition of approval. The criterion can be met.

(9) *The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in Section 136.140(D); or*

The subject parcel is located on 96.7% high-value farmland. This criterion does not apply.

- (10) *The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.136.140(D)(2) or (3) and:*

The subject parcel is located on 96.7% high-value farmland, and is not listed in (D)(2) or D(3). The criterion is met.

- (11) *The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC 17.136.140(D)(1) and:*

a. *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 demonstrate 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 subject parcel is 25.53 acres in size and is not in any farm or forest use. The subject parcel is currently entirely covered by the 100-year floodplain and contains an area that acts as a pond all year and never drains. It is also bordered on three sides by the Pudding River, cutting it off from other farmland in the area. Where not bordered by the river, the parcel is bordered by Wilco HWY (SR 214) for approximately 420 feet to its south and on its west side, bordered by a year-round wetland for approximately 1,000 feet. The parcel is wholly cutoff from the farmlands around it and taking access via a 55 mile per hour state highway makes farm use impractical. These conditions do not generally apply to other lands in the area, which are of a much larger size and contain far less floodplain and riverbanks. The subject parcel only contains approximately 12 acres of usable lands when taking out the lands existing as the riverbanks and wetlands. The parcel varies greatly from its elevation along the highway to the north and the changes in elevation make commercially

farming the property difficult. The property is largely overgrown, but once cleared and graded, it may be possible to establish a hobby farm on areas not subject to seasonal flooding.

This criterion is specific in stating that size and economic potential are not the only factors in determining impracticability of a parcel to be farmed. This parcel contains natural and manmade barriers to commercial farm management in addition to the limited size and economic potential.

Applicant establishes that the unique combination of factors inherent in the location of the parcel creates a physical barrier rendering farm use impracticable. The criterion is met.

- 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 farmlands surrounding the subject property, however, the same barriers that preclude this parcel from being farmed act as a buffer for conflicts between the subject property and active farmlands. A dwelling on the parcel would not interfere with farm operations as there would be no crossover of uses, as well as a distance of 200 to 700 feet from other uses. Any traffic generated by the dwelling would be handled by Wilco Highway which is a state highway and can handle higher volumes of traffic than local roads. The 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 2,000 acres or a smaller area not less than 1,000 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, and 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 nonirrigated 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.*

Applicant submitted a cumulative impact analysis with a 2000-acre study area map that was provided by Marion County Planning. The purpose of this analysis is to determine whether the proposed dwelling would 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 materially alter the stability of the overall land use pattern in the area. The first portion of this is addressed in 17.137.030(D)(11)(a)(ii) above.

Applicant has defined, through the cumulative impacts analysis, what the broad types of farm uses are, the number, location, and type of existing dwellings, the dwelling development trends since 1993, and the potential future developments of lot-of-record and/or non-farm dwellings. The range of the study area is west of the City of Woodburn. It encompasses the SA and EFU zoned parcels north and south of Wilco HWY and touches the edge of the City of Woodburn to the west and almost the border of Marion County to the east.

Applicant has provided the map with annotations of the locations of class IV – VI soils, as well as an annotated spreadsheet of parcels in the study area. Within the study area are a mix of parcels of large and small sizes, 108 in total. 69 dwellings were found and after review, 39 vacant parcels were identified. 29 of those were adjacent to a property in the same name with a dwelling and were removed. 3 of these were in public ownership which leaves 6 for further review. 4 of these parcels had high value soils and ownership was transferred out of the family after January 1, 1985. This leaves 2 parcels, including the subject parcel, that could qualify for homes. If this dwelling were to be approved, only 1 other parcel in the study area could qualify for a non-farm or lot-of-record dwelling. This number of dwellings is not significant within a 2,000-acre study area. The



placement of a dwelling on the subject parcel will not hinder the existing farm pattern and will not destabilize the overall land use pattern or suitability of the study area for commercial farm uses. Further, the subject parcel has been an enforcement issue with homeless camps for the County and the Applicant. A dwelling will hopefully alleviate this concern for both the Applicant and the County.

This area consists of large-scale hay, grass-seed, berry and nursery operations. A large, processing plant for farm crops to which local farm deliver is located just inside the City of Woodburn. Small properties are mixed in with hobby farms or no farm use at all and dwellings.

The applicant's representative concludes that the proposed lot-of-record dwelling will not materially alter the stability of the land use pattern in the area and will not make it more difficult for 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. The pattern of development in this area is primarily small farms and large farm properties. The development of all possible lot-of-record dwellings and non-farm dwellings would not alter the existing development pattern of the last 30 years, nor make it more difficult for the operation of farms that exist within the study area. The criterion is met.

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

The County shall provide this notice. The criteria will be met as part of the notification process followed by Marion County. The criterion can be met.

4. Marion County Planning Staff recommends approval of the proposal based on the existing record, and if Applicant's request is approved, Marion County Planning recommends the following conditions be applied if the application is approved:
- A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
  - B. The applicant shall meet the requirements of MCC 17.136 for the EFU zone.
  - C. The County Assessor shall be notified that the county intends to allow the dwelling.
  - D. The applicant will record a Declaratory Statement acknowledging the subject parcel is within the 100-year floodplain
  - E. The applicant will record a Farm/Forest Declaratory Statement acknowledging the need to avoid activities that conflict with nearby farm and forest uses and practices.

## **CERTIFICATE OF MAILING**

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

Norman Bickell  
2232 22<sup>nd</sup> Avenue  
Salem, OR 97317

Sharon Vaughn  
501 N. Main Street  
Newberg, OR 97132

Bill Brown  
14440 Wilco Highway NE  
Woodburn OR 97071

Dan Hemshorn  
14350 Wilco Highway NE  
Woodburn OR 97071

Area Advisory Committee #6 (via email)  
Ben Williams  
Friends of French Prairie  
[Fofp99@gmail.com](mailto:Fofp99@gmail.com)

Roger Kaye (via email)  
Friends of Marion County  
[rkaye2@gmail.com](mailto:rkaye2@gmail.com)

1000 Friends of Oregon  
133 SW 2nd Ave  
Portland, OR 97204-2597

### **County Agencies Notified:**

Assessor's Office (via email)  
[assessor@co.marion.or.us](mailto:assessor@co.marion.or.us)

Tax Collector (via email)  
[NMcVev@co.marion.or.us](mailto:NMcVev@co.marion.or.us)  
[ADhillon@co.marion.or.us](mailto:ADhillon@co.marion.or.us)

Surveyor's Office (via email)  
[KInman@co.marion.or.us](mailto:KInman@co.marion.or.us)

Fire District: (via email)  
[gibbsj@woodburnfire.com](mailto:gibbsj@woodburnfire.com)

Planning Division (via email)  
[breich@co.marion.or.us](mailto:breich@co.marion.or.us)  
[abarnes@co.marion.or.us](mailto:abarnes@co.marion.or.us)  
[ANajeraSanchez@co.marion.or.us](mailto:ANajeraSanchez@co.marion.or.us)

Properties within the Floodplain (via email)  
[breich@co.marion.or.us](mailto:breich@co.marion.or.us)

Building Inspection (via email)  
[pwolterman@co.marion.or.us](mailto:pwolterman@co.marion.or.us)  
[Kaldrich@co.marion.or.us](mailto:Kaldrich@co.marion.or.us)  
[ABammes@co.marion.or.us](mailto:ABammes@co.marion.or.us)  
[CTate@co.marion.or.us](mailto:CTate@co.marion.or.us)

Public Works LDEP Section (via email)  
[jrasmussen@co.marion.or.us](mailto:jrasmussen@co.marion.or.us)  
[mcldep@co.marion.or.us](mailto:mcldep@co.marion.or.us)  
[JShanahan@co.marion.or.us](mailto:JShanahan@co.marion.or.us)

School District: (via email)  
Woodburn School District  
[sbishop@woodburnsd.org](mailto:sbishop@woodburnsd.org)

**State Agencies Notified:** (via email)  
DLCD  
[Hilary.foote@state.or.us](mailto:Hilary.foote@state.or.us)  
ODOT  
[ODOTTr2planmgr@odot.state.or.us](mailto:ODOTTr2planmgr@odot.state.or.us)

**Federal Agencies Notified:** (via email)  
[Roxanne.Pilkenton@fema.dhs.gov](mailto:Roxanne.Pilkenton@fema.dhs.gov)

- F. Any future development or grading shall obtain a floodplain development permit or LOMA (Letter of Map Amendment) prior to any work being started.
  - G. The county shall provide notice to the Oregon Department of Agriculture (ODA) of this dwelling approval.
5. The proposed conditions of approval are necessary for the public health, safety, and welfare.

### VII. Order

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of the Administrative Review Application of Sharon K. Vaughn to place a lot of record dwelling on a 25.53-acre parcel in the EFU (Exclusive Farm Use) zone located in the 14000 block of Wilco Hwy NE, Woodburn, Oregon. The Administrative Review Application is **APPROVED** subject to the following conditions of approval which are necessary for the public health, safety, and welfare.

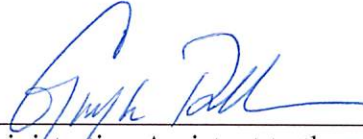
### VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, Oregon) by 5:00 p.m. on the 3rd day of February, 2025 (15 days after the date of the Order). The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be returned.

DATED at Salem, Oregon this 16<sup>th</sup> day of January, 2025.

  
\_\_\_\_\_  
Jill F. Foster  
Marion County Hearings Officer

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 16<sup>th</sup> day of January, 2025 and that the postage thereon was prepaid.



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Administrative Assistant to the  
Hearings Officer