

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
ADMINISTRATIVE REVIEW CASE NO. 20-003**

**APPLICATION:** Application of the M. Allene Deckert Trust 50% and 78th Street NE LLC, for an administrative review to place a primary farm dwelling on a 10.05 acre parcel in an EFU (Exclusive Farm Use) zone located in the 7700 block of State St, Salem. (T7S; R2W; Section 26C; tax lot 800).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

**EXPIRATION DATE:** This decision is valid only when exercised by **April 20, 2024** unless an extension is granted. The effective period may be extended one time for two years 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).

**WARNING:** A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:**

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest 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.
3. Prior to the final occupancy the applicant must provide evidence, to the satisfaction of the Planning Director, that property is in the ownership of 78<sup>th</sup> Street LLC and that the dwelling will be occupied by Jordan Schweiger.

**OTHER PERMITS, FEES AND RESTRICTIONS:** This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **April 20, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **April 21, 2020** unless appealed.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations. Dwellings in conjunction with farming may be approved subject to certain criteria.
2. The subject property is located on the northwest corner of the intersection of State Street and 78<sup>th</sup> Avenue NE. The property is undeveloped and planted in mature trees. The property is described in deeds at least as far back as 1979 and is considered a legal parcel for land use purposes.
3. Surrounding property to the west is zoned Industrial and contains industrial buildings. All other surrounding properties are zoned EFU and in various types of farm use.
4. The applicants are proposing place a primary farm dwelling on the property.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property is composed of high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) commented on their engineering requirements and advisory, they include:

#### ENGINEERING REQUIREMENTS

A. In accordance with Marion County Code (MCC) 11.10, driveways must meet MCPW design standards. The following numbered sub-requirements pertain to access:

- 1) At the time of application for building permits, an Access Permit will be required for the dwelling and/or shop, whichever comes first.
- 2) In accordance with county transportation planning policies, access to the proposed dwelling and shop will need to be derived from 78th Avenue, a Local road, which is of a lower functional class relative to State Street, an Arterial.
- 3) The location of the 78th Avenue access should be spaced at least 100 feet away from the centerline of the UPRR; see Advisory, further below.
- 4) It is noted that roadside vegetation removal on 78th Avenue will be required in conjunction with the residential Access Permit.
- 5) Also in keeping with county transportation planning policies that strive to minimize the number of accesses on higher functional class roads, the State Street field access shall be permanently closed by replacing the gate with fencing and removing the rocked approach as part of the work required under the 78th Avenue Access Permit.
- 6) An unmaintained, gated field access is also present on 78th Avenue. If this access is not converted into the residential/shop access, then it too shall be closed if not meeting access spacing standards.

B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinance #00-10R and #98-40R, respectively.

C. Utility work in the public right-of-way requires separate PW Engineering permits.

ENGINEERING ADVISORY

D. Applicant is advised OAR 741-120-0020 (8) pertaining to Grade Crossing Construction and Maintenance in proximity to a railroad, "The construction of new driveways within 100 feet of any railroad track at existing grade crossings requires an application under ORS 824.206.....".

Marion County Building Inspection commented that a building permit is required for new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that site evaluation is required.

1000 Friends of Oregon commented on the proposal. The comments questioned whether the property was in farm use, in the proposed dwelling is going to be occupied the farm operator, questions whether the income standard was met.

All other contacted agencies stated no objections to the proposal.

7. Primary farm dwellings located on high-value farmland may be approved when the standards in Chapter 17.136.030(A)(1) of the Marion County Code (MCC) are satisfied. These standards include:

A. *There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;*

Applicant states that 78<sup>th</sup> Street LLC, owns no resource zoned properties in Marion County. A search of the Marion County Assessor reconfirmed the statement, this criterion is satisfied.

B. *The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;*

The applicant supplies mature trees for landscaping purposes that range in price from \$4,000 to \$6,000 each. They indicate that the gross income from the sale of the trees exceeded \$80,000 in 2019 and 2020, and submitted invoices and signed statement from a certified public accountant that income standard is met. In response to the comments from 1 000 Friends of Oregon, supplemental information was provided demonstrating that the price per tree corresponds with the industry standard. This criterion is met.

C. *The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;*

Applicant, in there supplemental statement , state the primary use of the property is to raise and sell nursery landscaping stock that includes large trees typically in excess of 20 feet tall. The trees are sold with roots intact to be replanted on other properties. The production of nursery stock is considered farm use and a site inspection verified the nursery stock is being grown on the property. This criterion is met.

D. *The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section.*

In the supplement statement applicant explains that the farm operator for 78<sup>th</sup> Street LLC is Jordan Schweiger. He is responsible for raising and marketing the nursery stock be grown on the property and he will be the occupant. This criteria can be met with conditions of approval that, at the time of implementation, the property is in the ownership of 78<sup>th</sup> Street LLC and that the dwelling will be occupied by Jordan Schweiger.

8. Based on the above findings, it has been determined that the proposed secondary dwelling satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Planning Division Manager

Date: April 3, 2020

If you have any questions regarding this decision contact Joe Fennimore at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.