



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 23, 2017

Department: Public Works Agenda Planning Date: August 17, 2017 Time required: 20 min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Public hearing on appeal of hearings officer's decision denying Conditional Use (CU) 17-012/Greenwood.

Issue, Description & Background In conditional use case 16-033, the applicants applied to change the occupant of a previously approved temporary hardship dwelling from Scott Greenwood to Tesha Greenwood. That decision was denied by the planning director and due to some unusual circumstances was not appealed. On April 5, 2017, the planning director allowed the applicant to refile the request and sent the matter directly to the hearings officer. The hearings officer conducted a public hearing on May 3, 2017, and left the record open until May 10, 2017. On June 27, 2017, the hearings officer issued a decision denying the request. That decision was appealed to the board of commissioners on July 12, 2017, and on August 2, 2017, the board accepted the appeal and scheduled this public hearing. In the denial the hearings officer found that the applicant did not satisfy several of the criteria. The applicant failed to provide the requisite medical hardship certificate from a medical doctor, did not demonstrate that the care needed by Ms. Greenwood could not be provided by a family member, and did not identify the specific extent and nature of the primary care needed and the ability of the proposed caregiver to provide that care. In addition, the hearings officer found that the mobile home on the property approved by Administrative Review Case 10-020 as a secondary farm dwelling, is not being occupied by an employee of the farm as required and therefore is a violation of the Marion County Code (MCC). Under a provision in MCC 17.110.680 a land use permit cannot be issued if a property is in violation of the Marion County Code, unless the permit would correct the violation. In the appeal the applicant disagrees with the conclusion of the hearings officer the hearings officer made in findings 10, 14, 15, 19, 23, 31, and 35. She argues that the certificates provided were adequate to meet the criteria, that family members are not able to care for her, that the proposed caregiver is qualified, and that the occupant of the mobile home does perform work on the property to offset some of the rent cost.

Financial Impacts: None.

Impacts to Department & External Agencies None.



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Options for
Consideration:

1. Continue the public hearing, requiring an agreement from the applicant to extend the 150 day decision making deadline.
2. Close the hearing and leave the record open.
3. Remand the matter back to the hearings officer requiring an agreement from the applicant to extend the 150 day decision making deadline.
4. Close the public hearing and approve or deny the application or approve a modified proposal.

Recommendation:

None.

List of attachments:

Hearings officer's decision
Appeal.
Physician certificates
Hardship provisions
Accessory farm dwellings

Presenter:

Joe Fennimore

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

Copies to:

Joe Fennimore - gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. CU 17-012
)
Application of:) Clerk's File No.
)
Tasha and Scot Greenwood) Conditional Use

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Tasha and Scot Greenwood [hereinafter the Greenwoods] for a conditional use medical hardship change of occupant for Tasha Greenwood to use an existing accessory structure as a hardship dwelling on 55 acres in an EFU (Exclusive Farm Use) zone located at 9332 Santiam Loop SE, Aumsville (T9S; R1W; Section 19; tax lot 1700).

II. Relevant Criteria

The Planning Division and the Greenwoods agree that the standards and criteria relevant to this application are found in the Marion County Code (MCC) title 17, especially chapters 17.120.040, 17.136.060(A), 17.110.680 and in ORS 215.283.

III. Public Hearing

A public hearing was held on this application on May 3, 2017. At the hearing, the Planning Division file was made part of the record. The record remained open until May 10, 2017, for all interested persons and for Applicants to submit additional information.

The following documents were presented, marked and entered into the record as exhibits:

Exhibit 1 - Memorandum of Marion County Planning/Reich, Conditional Use 17-12/Greenwood, May 3, 2017, 1 page, with attachments: Petitioner's Trial Memorandum, July 7, 2016, 8 pages, and Certificate of Service, 1 page; Respondent's Trial Memorandum, July 7, 2016, 8 pages; Assets and Liabilities Values and Distribution Worksheet/Greenwood and Greenwood, 7 pages.

Exhibit 2 - Public Hearing Comments, Conditional Use 17-012, Larimer & Sears LLC, 6 pages, with attachments: Physician's Certificate, Mark J. Scherlie, D.O., 8/10/2016, 1 page; Mark J. Scherlie, D.O., Curriculum Vitae, 3 pages.

The following documents were received before the hearing record was closed May 10, 2017:

Exhibit 3 - Letter and email cover sheet dated May 10, 2017, from Larimer & Sears LLC to Gilman Fennimore and Hearings Officer re: Conditional Use 17-012/Greenwood, 2 pages, with attached Residential Lease Agreement, 20 July, 2015, between the Greenwoods and William and Violet Hampton, 10 pages; Lease Amending Agreement, 5 October, 2016, between Tesha Greenwood and William and Violet Hampton, 3 pages; and a photocopy of a check dated 1-23-17, payable to "Dr Bill Hampton" in the amount of \$130.00 with the notation that the Hearings Officer reads as "Adjust & Door Knob" signed by Tesha Greenwood.

No objections were raised to notice, jurisdiction, conflicts of interest, or evidence or testimony.

The following persons appeared at the hearing:
Sam Sears, counsel for Tesha and Scot Greenwood
Brandon Reich, Marion County Planning Division

The following persons appeared and provided testimony:
Tesha Greenwood
William Hampton, D.C.

IV. Findings of Fact

The Hearings Officer, after careful consideration of the evidence in the record, issues the following findings of fact:

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. A temporary hardship dwelling may be approved as a conditional use provided the need is justified and the residence will not have a detrimental impact upon the existing or potential farming and timber activity in the area.
2. The subject property is located approximately 2,000 feet south of the intersection of Stayton Road and Santiam Loop SE. The property contains a horse training and boarding facility, a dwelling, a hardship dwelling inside an existing barn, a manufactured dwelling approved as a secondary dwelling for persons working on the farm, accessory structures, well and septic drain fields.
3. Applicants were previously approved for the hardship dwelling in Conditional Use 06-39. Nearly the entire property is in the floodplain. Applicants received floodplain permits for the

hardship dwelling in Conditional Use 06-39 and for a replacement footbridge and habitat restoration in Floodplain Permit 09-6. In 2010, Applicants received approval for a secondary farm dwelling and for a variance to use an existing accessory structure as the hardship dwelling. In 2016, Applicants applied to use the existing hardship dwelling for Tesha Greenwood and the application was denied.

4. All surrounding properties are zoned EFU and in various types of farm use.
5. According to the Soil Survey of Marion County Area Oregon, 95% of the property is composed of high-value farm soils.
6. Marion County Building Inspection commented that building and septic permits would be required if approved.

V. Additional Findings of Fact and Conclusions of Law

1. Applicants must prove by a preponderance of substantial evidence that 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 is credible, reasonable and reliable in Applicants' favor, then their burden of proof is met and the application will be approved.
2. The Planning Director forwarded the application to the Hearings Officer for decision under MCC 17.119.100. The Hearings Officer may hear and decide this matter.
3. Under MCC 17.119.020, property owners may file an application for review. The property owners listed in the application are Tesha and Scot Greenwood. Further, under MCC 17.119.025, the signatures of all property owners are required on the review application. The application is signed by the Applicants.
4. Property owners listed on the Deed of Record of 28th June 2001 are SCOT GREENWOOD and TESSA L. GREENWOOD, husband and wife, as tenants by the entirety. MCC 17.119.020 and MCC 17.119.025 are satisfied.
5. The Planning Division and the Greenwoods stated to the Hearings Officer that they accept the application of criteria under MCC 17.120.040(A) and (B) to the issue of "hardship" to Tesha Greenwood in consideration of the application for Conditional Use 17-012, and the Planning Division and the Greenwoods presented arguments regarding the criteria establishing "hardship." The Hearings Officer accepts the decision of the Planning Division and the Greenwoods and will

apply the criteria in determining the existence of "hardship" to Tesha Greenwood. Under MCC 17.120.040 (A) and (B) the Applicants must demonstrate:

(A) For the purposes of this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(B) A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self-care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.

6. Applicants have provided a signed Physician's Certificate form provided by Mark Scherlie, D.O., Doctor of Osteopathic medicine.
7. Applicants, through counsel, have presented "Public Hearing Comments" offering arguments as to the interpretation to be given to MCC 17.120.040(B) addressing the requirement of a certificate of a doctor of medicine or licensed psychologist as to Ms. Greenwood's hardship. (Exhibit 2.) Marion County Planning Division has also presented interpretations of section (B). (MCPD Memorandum April 24, 2107, pages 2-3.)
8. The Hearings Officer has weighed the interpretations proffered by the Planning Division and the Greenwoods and finds that there are several recognized classifications of the term "physician" used in the laws of the state of Oregon, among these are "Doctor of Medicine," "Doctor of Osteopathy," and "Doctor of Podiatric Medicine."
9. The Hearings Officer is persuaded and finds that the requirement under MCC 17.120.040(B) of a statement from "A doctor of medicine" was a decision of the enacting legislative body to indicate the particular classification of physician they deemed necessary "to provide the physical or mental condition that prevents the person(s) with the hardship from providing the basic self-care needed to live on a separate lot," and to "attest ... the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises."
10. Applicants have failed to provide the requisite medical hardship certificate from a medical doctor to meet the requirements of MCC 17.120.040(B) in establishing a medical hardship or hardship for the care of an aged or infirmed person or persons.

11. Dr. Scherlie's Physician's Certificate (Exhibit 2) also fails to indicate "the physical or mental condition that prevents the person(s) with the hardship from providing the basic self-care needed to live on a separate lot." Dr. Scherlie states, in the Physician's Certificate supplement dated 3/31/2017, "Since I am not a specialist it would not be proper for me to make a final medical diagnosis regarding her [Ms. Greenwood's] condition."

The requirements of MCC 17.120.040(A) and (B) have not been met.

12. MCC 17.120.040(C) states:

Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the property. If evidence is presented that there is no family member able to provide the needed care the caretaker may be someone else provided the property is located in a zone other than the EFU, SA, FT or TC zones. In the EFU, SA, FT and TC zones, occupancy of the hardship mobile home or recreational vehicle is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283.

13. As with MCC 17.120.040(A) and (B), section (C) addresses the "the hardship" dwelling for a non-relative caretaker. Again, the Planning Division and the Greenwoods have accepted the application of the criteria in section (C) to this conditional use application, and both presented evidence and arguments on the issue. The Hearings Officer accepts the decision of the Planning Division and the Greenwoods and will apply the criteria under MCC 17.120.040(C).

14. The Greenwoods must address the following criteria: "If evidence is presented that there is no family member able to provide the needed care the caretaker may be someone else..."

The Greenwoods presented the testimony of Tesha Greenwood. Ms. Greenwood testified that her husband, Scot Greenwood, is unable to care for her due to his own disabilities. The Hearings Officer is persuaded as to this fact having observed Mr. Greenwood in the hearing room.

Ms. Greenwood testified that she has a 21-year-old son, who "basically just sleeps at home," attends college, works at his maternal grandfather's saw tool business, and is in training for martial arts competitions.

Ms. Greenwood testified that she has a 19-year old daughter who lives at home, works 2 days a week riding horses for clients,

suffers from anxiety, does not do well in public settings, and "is not quite able to take care of my medical needs."

The Hearings Officer was not presented with substantial, credible testimony or evidence factually sufficient to establish the required showing "that there is no family member able to provide the needed care..." While Ms. Greenwood's children appear to have many activities in their lives, there is no evidence that the children are unable to reasonably accommodate Ms. Greenwood's care needs into their activities. The burden of proof is upon the Applicants to establish the required criteria by a preponderance of evidence.

15. Ms. Greenwood testified at some length regarding her medical regimen, her medications, and the various diagnoses she has been provided by physicians. Ms. Greenwood did not offer testimony addressing the type of needed care or the extent of needed care she requires.
16. As part of their Conditional Use application, under the heading "Medical Hardship," the Greenwoods included a page with the heading "2|Page, Conditional Use Application (Re-Submission) 16-033, March 31, 2017," and a second page with the heading "3|Page, Conditional Use Application (re-Submission) 16-033, March 31, 2017." These pages list the various "symptoms" of Ms. Greenwood's medical situation.

The Hearings officer specifically recognizes that these submissions are not submitted under oath; and are not provided by a doctor of medicine as required in MCC 17.120.040(B)

17. The submissions do however contain statements of possible physical results of Ms. Greenwood's symptoms, and will be considered by the Hearings Officer in weighting the evidence presented.

"Pericarditis - ...Ms. Greenwood is unable to lay flat or bend or crouch..."

"Pleurisy - This causes chronic cough, lack of breath, and lack of energy..."

"Chronic Fatigue - ...She is periodically unable to drive due to the dangers of driving with fatigue."

"Fibromyalgia - ...The medication and general condition prevents Ms. Greenwood from being able to work or drive. She also suffers from what her doctors have referred to as 'Fibro Fog.' The symptoms of this are extreme confusion, such as forgetting basic information like where her car is parked, where she has put items, or the day of the week. This is a state that comes and goes and Ms. Greenwood requires considerable help when this happens."

"Digestive issues - ...she is unable to digest most foods correctly. This causes extreme stomach pain, dehydration, and lack of balanced nutrition. This also makes Ms. Greenwood more susceptible to common illnesses."

"Chronic Kidney stones - These have required previous Emergency Room visits and pain medications."

"Neurocardiogenic Syncope - ...This has caused fainting and needs to be carefully managed."

"Depression and Anxiety - ...When she has bouts where she is confused or forgetful, she takes medications to calm panic attacks."

"Muscle cramps and spasms - ...At their worst they make it so that she cannot do any meaningful work or care for herself."

"Reynaud's disease - The circulation to Ms. Greenwood's fingers is compromised. This can lead to gangrene. No treatment is available."

"Jaundice - Cause to be determined along with treatment course."

18. Ms. Greenwood did offer testimony as to her activities in operating the Cowboy Creek Equine Ranch. Ms. Greenwood testified that she works "running the farm," that she "develops advertising for the ranch, boards and stables 20 horses, feeds and turns out the horses each day, cleans the stalls, and maintains the grounds and trails." Ms. Greenwood testified she works approximately 6 hours per day, "maybe 30 to 50 hours per week average."
19. Ms. Greenwood testified that William Hampton, D.C., a month-to-month tenant on the ranch provides some assistance about the ranch at various times. But, there was no nexus established to connect Ms. Greenwood's needed care and Mr. Hampton's assistance.
20. Ms. Greenwood testified that she worked or works (it was not clear to the Hearings Officer) at Costco warehouse, but due to a flair-up of her symptoms, did not work at Costco from November (2016) to January (2017).
21. The Hearings Officer will not speculate as to how each of the effects of Ms. Greenwood's symptoms impacts her needed care. The burden is on the Applicants to present evidence addressing the criteria for the Conditional Use sufficient to enable the Hearings Officer to find by a preponderance of evidence that the criteria have been met.
22. The Hearings Officer is not persuaded by the testimony and materials presented on the issue of needed care and the need for a non-relative caretaker and finds from the evidence presented that Applicants have not established by a preponderance of evidence that the care needed by Ms. Greenwood cannot be

provided by family members and requires a non-relative caretaker.

The requirements of MCC 17.120.040(C) have not been met.

23. MCC 17.120.040(D) states:

Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.

The Planning Division in its Memorandum of April 24, 2017, states: "Mr. Razy would be providing care such as driving Ms. Greenwood to appointments, running errands, and helping out on the property. It appears this criterion is met."

This statement is found to be insufficient as proof of the proposed caretaker's availability and skills to provide primary care as required by a medical doctor or licensed psychologist to Ms. Greenwood.

The Greenwoods' Conditional Use application at 4|Page, Conditional Use Application (Re-Submission) 16-033, March 31, 2017, states: "The care Ms. Greenwood requires is primarily concerning activities of daily living. This includes help around her house and the farm when her medical conditions flare up. It would also include driving her to appointments and help with running errands. The help she needs requires no special certifications or qualifications beyond what would be ordinary (e.g. a drivers' license). Mr. Razy is capable of performing the care Ms. Greenwood requires and he is available to do so. Mr. Razy is currently unemployed and so is available to provide care to Ms. Greenwood. In the past, when he has worked and provided care, he has worked night shifts, which are times that don't generally conflict with the times in which Ms. Greenwood needs the most help."

This statement is also found to be insufficient as proof of the proposed caretaker's availability and skills to provide primary care as required by a medical doctor or licensed psychologist to Ms. Greenwood.

The Hearings Officer has previously found, at Item #15 above, that "Ms. Greenwood testified at some length regarding her medical regimen, her medications, and the various diagnoses she has been provided by physicians. Ms. Greenwood did not offer testimony addressing the type of needed care or the extent of needed care she requires."

The Hearings Officer has also previously found at Item #10 above that "Applicants have failed to present the requisite medical

hardship statement from a medical doctor to meet the requirements of MCC 17.120.040(B) in establishing a medical hardship or hardship for the care of an aged or infirmed person or persons."

Mr. Razey did not testify, nor was proof presented as to the skills or abilities of Mr. Razey, to provide the primary care required by Ms. Greenwood.

The evidence presented by Applicants is not sufficient to establish the criteria required in subparagraph (d) regarding the specific extent and nature of the primary care required by Tesha Greenwood or as to the availability and skills of those providing the required care.

The requirements of MCC 17.120.040(D) have not been met.

24. MCC 17.120.040(E) states:

One of the residences shall be removed from the property within 90 days of the date the person(s) with the hardship or the care provider no longer reside on the property. In the case of a recreational vehicle it shall be rendered uninhabitable by disconnection from services. An agreement to comply with this requirement shall be signed by the property owner and the care providers. Oregon Department of Environmental Quality removal requirements also apply.

The Planning Division in its Memorandum of April 24, 2017, Item No. 9(e) states: "The agreement to comply with this requirement was signed as a declaratory statement with Conditional Use Case #06-39. If approved, the requirement to render the hardship dwelling uninhabitable within 90 days of the date the person with the hardship or the care provider no longer reside on the property should still be made a condition of any approval."

The Greenwoods Conditional Use application raised no objection to this requirement and further at "4|Page, Conditional Use application (Re-Submission) 16-033, March 31, 2017," states "This can be arranged as necessary."

The Hearings Officer adopts the recommendation of the Planning Division. The requirement for removal of the hardship dwelling pursuant to MCC 17.120.040(E) is ordered as a condition of any approval. The requirements of MCC 17.120.040(E) can be met.

25. MCC 17.120.040(F) states:

The mobile home or recreational vehicle shall to the extent permitted by the nature of the property and existing development:

- (1) Be located as near as possible to other residences on the property;
- (2) On EFU, SA, FT and TC zoned property, be located on the portion of the property that is least suitable for farm or forest use, if it is not feasible to locate it near an existing residence;
- (3) Not require new driveway access to the street;
- (4) Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.

The Planning Division in its Memorandum of April 24, 2017, Item 9(f) states: "A hardship dwelling was previously approved at this location. This criterion was determined to have been met previously by Administrative Review/Variance Case #10-020."

The Greenwoods Conditional Use application at "4|Page, Conditional Use Application, (Re-Submission) 16-033, March 31, 2017, states: "A hardship dwelling was previously approved at this location. This criterion was determined to have been met previously and has not changed."

No evidence or testimony was presented to the Hearings Officer regarding the hardship dwelling approval in Administrative Review/Variance Case #10-020 or regarding any change in circumstances or conditions at the property.

The Hearings Officer is without an evidentiary basis to make a finding that the requirements of MCC 17.120.040(F) have been met.

26. MCC 17.120.040(G) states:

The use is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal.

The Planning Division Memorandum of April 24, 2017, Item 9(g) states: "If approved, this can be made a condition of any approval."

The Greenwoods Conditional Use application at "4|Page, Conditional Use Application (Re-Submission) 16-033, March 31, 2017, states: "Ms. Greenwood will apply for review and approval as required."

The Hearings Officer adopts the recommendation of the Planning Division and this condition will be made a requirement of any approval of the Conditional Use Application. The requirements of MCC 17.120.040(G) can be met.

27. Marion County Code 17.136.060(A) states:
The uses identified in MCC 17.136.050 shall satisfy criteria in the applicable subsections below:
- A. The following criteria apply to all conditional uses in the EFU zone:
1. 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.
 2. Adequate fire protection and other rural services are, or will be, available when the use is established.
 3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
 4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
 5. 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.
28. These criteria are addressed by the Planning Division in the Public Works Memorandum of April 24, 2017. The Planning Division states at section 11:

"If approved, the proposal will allow the continued placement of a temporary mobile home on the property. There is no evidence to indicate that the second temporary dwelling will have any adverse effects on surrounding properties in farm use. A Declaratory Statement was previously recorded with the property deed because the subject property is in a resource zone. This served to notify the applicant that farm or timber operations are located in the area. The hardship will not significantly increase traffic on area roads, fire protection is provided by the Stayton Fire District and the Marion County Sheriff provides policing. Other rural services, such as well and septic, are available on the property. Due to the temporary and residential nature of the use, the placement of a manufactured home will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, create a significant amount of noise, impact potential water impoundments or conflict with mineral and aggregate sites. The proposal appears to satisfy the criteria above."

The Hearings Officer adopts the findings and opinion of the Planning Division. The requirements of MCC 17.136.060(A) can be met.

29. The Hearings Officer will now address the remaining disputed issue.

Marion County Code 17.110.680 states:

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, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit or land use approval would correct the violation.

30. While a Hearings Officer's decision on this issue may not be necessary because the Hearings Officer has previously found herein that Applicants' evidence is not sufficient to establish the statutory requirements for a Conditional Use variance under MCC 17.120.040(A), (B), (C), (D) and (F) the Hearings Officer will nonetheless discuss the issues raised under MCC 17.110.680 in an effort to resolve the contested matters.

31. It is the Planning Division's position that a violation of Marion County Code 17.110.680 exists because:

"In 2010, the applicant was granted a permit for a secondary farm dwelling for a person working on the farm. Based on comments made by the applicant in the application form, the secondary farm dwelling is now occupied by Dr. Bill Hampton, who, based on information from his business website, provides chiropractic care for horse training centers in Colorado and Florida and gives seminars throughout the United States. This appears to be a separate business from the farm operation owned by Ms. Greenwood. The applicant states that Mr. Hampton provides grounds keeping duties, such as filling pot holes and maintaining horse trails, controlling pests, clearing the creek, decorating the property for holidays, providing Ms. Greenwood with produce, and maintaining fences. He also provides chiropractic care for horses boarded on the property. While most of these activities are generally found in rural areas, and some are related to farming, it's not clear how Mr. Hampton's activities on the property are a result of being employed by Ms. Greenwood's to work on her farm operation.

Since the secondary farm dwelling was approved for an employee of Ms. Greenwood to work on her farm, and there is no evidence that Dr. Hampton works on her farm, the secondary farm dwelling is being lived in contrary to the land use approval granted and in violation of provisions of state law that permit secondary farm dwellings on farm land. Consequently, the property is in violation of local and state law and no permits can be issued while this violation continues. The request to change the occupant of the hardship dwelling must be denied for this reason alone." (Memorandum of April 24, 2017, Item #13.)

32. Applicants respond:

"Dr. Hampton lives on the farm and provides the following services:

Dr. William Hampton generally provides grounds keeping duties, such as filling pot holes in the driveway and maintaining the horse trails. Dr. Hampton is responsible for clearing the creek and keeping it from damming and flooding. When the weather is warmer he grooms the riding areas. Dr. Hampton walks the property and alerts Ms. Greenwood to anything that needs attention. In addition, Dr. Hampton decorates and maintains the property for the holidays and provides Ms. Greenwood with produce. He helps maintain fencing and does varmint control. Finally, Dr. Hampton provides chiropractic care for horses that are boarded on the property.

As payment for his services Dr. Hampton receives a discount on his rent, a source of customers for his chiropractic services (including from Ms. Greenwood), and access to the property to use for farming and other activities. None of his services or activities are in violation of the previously approved variance permits for a secondary farm dwelling and Ms. Greenwood is, therefore, not in violation of MCC 17.110.680." (5|Page, Conditional Use Application (Re-Submission) 16-033, March 31, 2017.)

33. Applicants provided supplemental material regarding their positions in hearing Exhibit 2 and in submission Exhibit 3. These materials have been reviewed by the Hearings Officer and will be considered.

34. The following issue is presented: Does William Hampton, D.C.'s presence and activities on the property meet the requirements set forth in MCC 17.136.030(B)(1):

(B) Secondary Farm Dwellings. Secondary (accessory) dwellings customarily provided in conjunction with farm use. The

dwelling will be considered customarily provided in conjunction with farm use when:

- (1) The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

35. In her testimony, Ms. Greenwood, in response to the question "Do you have any employees on your farm?" identified William Hampton, D.C., and no other persons. Ms. Greenwood was unable to articulate Mr. Hampton's specific duties. In response to the question: "Is he required by you to perform the work you require?" Ms. Greenwood answered only "Yes."

Ms. Greenwood testified she is aware that Mr. Hampton is away from the property for periods of time but was unable to identify the times.

In response to a question "Could you operate the farm without his help?" Ms. Greenwood answered "No".

Ms. Greenwood testified that Mr. Hampton is paid for his services in caring for the horses. Mr. Hampton is paid by Ms. Greenwood for services to her horses, and by individual clients for services to their horses.

Ms. Greenwood testified that Mr. Hampton is compensated for other activities by a reduced rental for his dwelling.

Ms. Greenwood testified that she had no employment records regarding Mr. Hampton.

36. William Hampton testified as follows:

He is a Doctor of Chiropractic, retired.

He now teaches classes on animal chiropractic, primarily on horses.

He is gone from the farm once or twice a month for three to four days giving classes and for other activities.

He lives on the farm and helps out, and has cared for Ms. Greenwood's horses. He is compensated separately by clients.

He fills in holes on the farm and in the riding paths, and keeps the trails clean. He provides "security" seeing that other

people don't come onto the property and he lives 6/10 of a mile from the Greenwoods dwelling.

He spread compost [the date of the hearing] today for 2 hours, and did some road repair.

He runs and repairs the mower, and burns cuttings and debris.

"Some days he may work 20 minutes one day and other days 12 hours."

He has the use under his rental agreement of 3 acres of land "on which I can pretty much do what I want."

He has available to him an additional 3 acres "that I can use if I help her [Ms. Greenwood] out."

"I am the eyes and ears of the farm. I watch for fires and for flooding to protect myself, the farm, and the area...I'm doing a lot of protection..."

37. During the open record period, Applicants submitted what has been marked as Exhibit 3. Exhibit 3 contains a "Residential Lease Agreement" between the Greenwoods and William and Violet Hampton dated July 20, 2015, expiring July 21, 2016. After July 21, 2016, the agreement became a month-to-month tenancy.

The Hearings Officer's review of the Lease Agreement discloses no terms or conditions that affect the amount of Mr. Hampton's monthly rental; nor are there any terms or conditions expressing any duties Mr. Hampton is required to perform for occupying the rental dwelling.

The only item offered relating to Mr. Hampton's status on the property other than as a month-to-month tenant is a check dated "1-23-17" signed by Ms. Greenwood payable to Mr. Hampton bearing a notation which the Hearings Officer reads as "Adjust & Door Knob."

A letter of Ms. Greenwood's attorney dated May 10, 2017, accompanying the submissions filed before the close of the hearing record states: "The check provided by Ms. Greenwood is an example of a payment to Dr. Hampton for Chiropractic Care."

38. The Hearings Officer has weighted the testimony and evidence presented regarding William Hampton, D.C.'s, status on the farm and finds that Mr. Hampton is not "a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm

uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator."

At best, the status of Mr. Hampton on the farm is that of a lessee, and a supplier of services as an independent contractor, or at his personal discretion.

The requirements of MCC 17.136.030(B)(1) have not been met.

Therefore the land is being used in violation of MCC chapters 17.120.040, and 17.110.680.

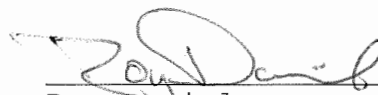
VI. Order

It is hereby found that Applicants have not met the burden of proving the applicable standards and criteria for approval of a Conditional Use in the EFU zone. Therefore, the Conditional Use application is DENIED.

VII. 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 Street NE, Salem) by 5:00 p.m. on the 13th day of July 2017. 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 refunded.

DATED at Salem, Oregon, this 27th day of June 2017.



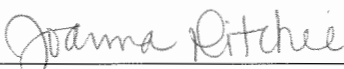
Roy Daniel
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

	<u>Agencies Notified</u>
Tesha Greenwood 9332 Santiam Ip. SE Aumsville, OR 97325	Planning Division (via email: gfennimore@co.marion.or.us) (via email: breich@co.marion.or.us) (via email: lmilliman@co.marion.or.us)
Scot Greenwood 9332 Santiam Ip. SE Aumsville, OR 97325	Code Enforcement (via email: bdickson@co.marion.or.us) Public Works Engineering (via email: jrasmussen@co.marion.or.us) Building Inspection (via email: twheeler@co.marion.or.us) Assessor's Office (via email: assessor@co.marion.or.us) Tax Office (via email: adhillon@co.marion.or.us)
Sam Sears 570 Liberty St. SE, Ste. 240 Salem, OR 97301	AAC Member No. 2
Jon Tucker P.O. Box 615 Stayton, OR 97383	Raymond Bartosz 10443 W Stayton Rd. SE Aumsville, OR 97325
David Snook 4641 Harlan Dr. NE Salem, OR 97305	Dennis Koenig 7538 Stayton Rd. SE Turner, OR 97392

by mailing to them copies thereof, except as specified above for agency notifications. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon on the 27th day of June 2017, and that the postage thereon was prepaid.



Joanna Ritchie
Secretary to Hearings Officer

Request For Appeal

In the matter of the Application of:
Tasha and Scot Greenwood

Case No. CU 17-012 Conditional Use

I, Tasha Greenwood, would like to request an appeal of the decision made by Hearings Officer, Roy Daniel, on June 27th, 2017 concerning my request to change the occupant of the hardship dwelling from my ex husband, Scot Greenwood's name, into my own name.

I currently am the sole owner of 55 acres where I have a horse boarding business. I have up to 11 stalls filled as well as horses boarded in pastures. I offer trails for my clients to ride on which is a big draw for my business. I also work outside of the home at Costco. My ex-husband is paralyzed and we have had Zach Razey living in the hardship dwelling to provide care for both Scot and myself. I have been diagnosed with SLE by my Rheumatologist and suffer from multiple symptoms. Zach lives in the Hardship dwelling free of charge in exchange for his assistance. However, Zach is unable to pay for his utilities so I cover the cost of the utilities in exchange for him cleaning stalls. Stall care would typically be provided by the farm hand that lives in the Secondary Farm Dwelling. Stall care and feeding and caring for the horses directly takes on average 3-4 hours/day.

Dr William Hampton lives in the Secondary Farm Dwelling. He provides grounds keeping duties for my business. He maintains the riding trails I have. Maintenance of these trails are crucial to my business for horse owners to bring horses into my care. Dr Hampton mows several acres for me and keeps fire risks down. He does rodent control to help prevent injuries to the horses I care for. He does road maintenance and fills potholes. He prevents flooding by removing built up debris in the creeks and ponds. He clears the ground of debris that horses and riders can get hurt on. Because of his medical back-ground and training in multiple facets of horse care, he keeps an eye on the health of the horses on a daily basis. He is also a huge draw for horse owners to bring their horses to me for their care because he is a horse Chiropractor. Dr Hampton grooms arenas for me. Dr Hampton in the process of re-setting up and maintaining irrigation for me. Dr Hampton checks fences to make horses are secured. He also does blackberry control and noxious weed control. Dr Hampton grooms riding arenas which is crucial to horse boarding and he also maintains and fixes my tractor and implements. Grounds keeping can take anywhere from 2-12 hours/day.

My property has had these permits in place since 2010. The manufactured home was erected in 2007 originally as a hardship. The hardship dwelling was already on the property when we moved here in 2001. They have never affected any of our neighbors or environment negatively in any way. In fact the neighbors appreciate the extra security of having workers here. I am simply asking for the hardship to be placed in my name. I have provided the County with the appropriate doctor's certificates. I can now also provide an official diagnosis, however the symptoms and requirements that Doctor Mark Scherlie provided in his statement have not changed because of the diagnosis. Autoimmune diseases are in the top 10 leading deaths for women up to age 65. It can take an average of 4.6 years and 5 doctors to get diagnosed, but that does not mean the diagnosis did not exist during the evaluation time. The average wait to see a Rheumatologist is over a year at the current time. I indicated to the County that I had an appointment that I had been waiting several months for scheduled, but the hearing date was set just before my appointment so I was unable to provide the final diagnosis at the hearing. Dr Mark Scherlie will continue to be the doctor to maintain my condition.

In Section V number 10 of the Order it states that I did not provide a certificate from a medical doctor to meet the requirements of establishing a medical hardship. I did provide two certificates from Dr Mark Scherlie, a medical doctor, along with his credentials to prove that he was a medical doctor. I can now also provide documentations of the diagnosis as I have stated above. I refrained from submitting my entire medical record, because it is quite large for one, but also because it becomes public record, and my medical issues should be able to remain private. However if the County finds it necessary, I am willing to submit those as well.

Section V Number 14 of the Order states that I testified that Scot Greenwood was unable to care for me due to his own disability. While this statement is true I don't recall stating it as Scot and I were at the final part of our divorce and he plans on moving from the premises. The divorce is now final and the property is deeded in my name. It also states that I did not provide proof that my adult children could not care for me. I indicated that my son was never home due to his intense college and work schedule. The Order also says that I stated that my daughter works 2 days a week riding horses for clients and suffers from anxiety. It omits the fact that I also stated that she works at Double H Western Wear 2 days/week. She rides for outside barns 2-3 days/week. So she is away from the home 5 days/week. I did not include her medical history since it would become public record and because she sees Dr Mark Scherlie as well which Marion County has questioned his credentials as a medical doctor.

Section V Number 15 States that I did not indicate the type of care required of Zach Razey. They omitted in this section that I testified to needing Zach to be able to provide transportation for me. To run errands such as picking up prescriptions during times that I could not drive. I stated that he cares for my animals when I am too sick. Zach checks on me daily and is here on the property at most times. If I have moments of confusion and I can't remember phone numbers or contact information, Zach is on the property to help. Because I have syncope, Zach is here to check on me and make sure I am not collapsed and he is able to call medical assistance for me.

Section V Number 19 States that I was unable to provide a nexus establishing my needed assistance of Dr William Hampton. Both Dr Hampton and I testified to his duties and my need for his assistance on the property. Dr. Hampton and I set up a rental agreement so that we were both protected under the landlord tenant act. I also collect a discounted rent from Dr Hampton, in exchange for his labor. However we established a verbal agreement as to his duties and we neglected to finalize the agreement in writing. He pays a discounted rent in exchange for his farm duties, however certain seasons require much more labor at which point I would still collect rent but I will pay him for his work. This was set up this way for tax purposes. I also pay Dr Hampton separately for his services as a horse chiropractor as do my clients for tax purposes as well. Dr Hampton and I are both willing to sign a work agreement and arrange the payments however the County finds acceptable if we are able to move forward. However I do not see under which criteria we have violated. I did provide a check that I paid Dr Hampton for buying and fixing a door handle and adjusting one of my horses. Unfortunately my bank recently changed their computer systems and I am unable access any of my older check stubs.

Section V Number 23 States that I have not indicated how Zach Razey is qualified to provide care to me. I indicated to Marion County that Zach has worked at nursing homes and has more knowledge of how to asses a medical emergencies as well as how to respond to one far better than any of my family members as well as having the availability to be here at all times. It is Zach's responsibility to get me medical assistance when necessary as well as provide services such as transportation, to assist me when I am in severe pain, and to pick up prescriptions and food for me when needed. And most importantly check on me throughout the day.

Section V Number 31 Marion County Planning Division as well as Marion County Code Enforcement used an outdated website as their basis to determine Dr Bill Hampton's place of residence as well as his duties here on my property. During Dr Hampton's testimony he stated that he did reside as well as work here.

Section V Number 35 States that I was unable to determine the amount of time Dr Hampton was away from the property. Dr Hampton testified that he does travel a few times per year and it usually falls on a weekend. Dr Hampton does let me know when he is gone for an extended period of 4 or more days, but what he does on his weekends is not my business to know so I don't always know when he is gone.

I was also recently made aware that the dwelling that is currently the hardship dwelling that existed before 2001 when we purchased it was not permitted. I am unsure how we were not aware in 2010 that it was not permitted when we got approval for the Hardship permit. But if allowed to move forward, the permits will be taken care of immediately. I currently have the main dwelling septic permit on hold so that I can know which direction to move forward with getting the proper permits.

I appreciate the consideration of an appeal in this matter. I am unable to maintain my property or business without a farm hand on site to provide grounds maintenance or stall care. I am willing to adjust how my business is handled to accommodate Marion County's criteria as it is not my intent nor ever was to operate in violation. I am willing to provide any evidence that is required even if it exposes sensitive medical issues to the public. I have read Marion County Criteria multiple times and felt I was operating within the guidelines and I apologize that I may have violated any criteria.

Thank You,



Tesha Greenwood
9332 Santiam Loop SE
P O BOX 197
Aumsville, OR 97325
(503) 428-1902

PHYSICIAN'S CERTIFICATE

As set forth below, the Marion County Rural Zoning Ordinance provides for the placement of an additional homesite when certain hardship conditions exist.

TEMPORARY USE OF MOBILE HOMES DURING CERTAIN HARDSHIP CONDITIONS. The use of a mobile home on a temporary basis during a family hardship condition may be approved as a Conditional Use. A permit may be granted for a period of not more than one year and may be renewed for successive periods of one year if evidence is provided that the hardship condition continues to exist. In considering the request, it must be found that the hardship condition relates to the aged, the infirm, or to persons otherwise incapable of maintaining a complete, separate and detached residence apart from their family, and also whether the requested use will be relatively temporary in nature. It is not the intent of this provision to subvert the intent of the single-family zone or of any other zones by permitting more than one permanent residence on each property. In granting the request for temporary use of an additional homesite, conditions may be imposed that will preclude the possibility of such temporary use becoming permanent. The following Physician's Certificate must be completed and submitted with the hardship conditional use application.

A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.

This is to certify that Tasha Greenwood is a patient of mine and is
(please print or type name of patient)

physically handicapped due to Pleurisy, pericarditis, Raynaud's, Positive ANA
(please print or type explanation of condition)

Possible connective tissue D/O like Lupus, Final Diagnosis Pending
It is my opinion that this physical condition requires care and attention and the above named person should be permitted to reside nearby one who can give aid and comfort when the need arises.

Signature Mark J. Scherlie DO

Name Mark J. Scherlie DO
(print or type)

Address 1275 Wallace Rd NW, Salem, OR 97304

Date 04/10/2016

For Office Use Only

Case No. _____

Renewal to _____, 20____

Physician's Certificate

I, Mark Scherlie, DO, make the following sworn statement to supplement the previous Physician's Certificate that I signed on August 10, 2016, on behalf of Tesha Greenwood. As you are aware, I previously signed a statement indicating that Ms. Greenwood's physical condition prevents her from providing the basic self care needed to live without a caretaker residing on the same premises.

I have had chance to review the portion of Ms. Greenwood's new application providing details regarding her physical condition. That is an accurate description of the physical conditions that I have observed in treating Ms. Greenwood. Since I am not a specialist it would not be proper for me to make a final medical diagnosis regarding her condition. However, in my professional medical opinion I can state within a reasonable medical certainty that regardless of her final diagnosis Ms. Greenwood does experience significant physical symptoms and is being treated accordingly. I would continue to maintain, as I did in August 2016, that Ms. Greenwood's physical condition requires care and attention and she should be permitted to reside nearby one who can give aid and comfort when the need arises.

Signature: Mark J. Scherlie DO

Name: Mark J. Scherlie DO

Address: 1275 Wallace Rd NW Salem, OR

Date: 3/31/2017

HARDSHIP PROVISIONS

Marion County Code 17.120.040

17.120.040 Temporary use of mobile home or recreational vehicle during certain hardship conditions.

Use of a temporary mobile home or recreational vehicle for the care of someone with a hardship may be approved as a conditional use subject to meeting the following criteria:

A. For the purposes of this section “hardship” means a medical hardship or hardship for the care of an aged or infirm person or persons.

B. A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self-care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.

C. Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the property. If evidence is presented that there is no family member able to provide the needed care the caretaker may be someone else provided the property is located in a zone other than the EFU, SA, FT or TC zones. In the EFU, SA, FT and TC zones, occupancy of the hardship mobile home or recreational vehicle is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283.

D. Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.

E. One of the residences shall be removed from the property within 90 days of the date the person(s) with the hardship or the care provider no longer reside on the property. In the case of a recreational vehicle it shall be rendered uninhabitable by disconnection from services. An agreement to comply with this requirement shall be signed by the property owner and the care providers. Oregon Department of Environmental Quality removal requirements also apply.

F. The mobile home or recreational vehicle shall to the extent permitted by the nature of the property and existing development:

1. Be located as near as possible to other residences on the property;
2. On EFU, SA, FT and TC zoned property, be located on the portion of the property that is least suitable for farm or forest use, if it is not feasible to locate it near an existing residence;
3. Not require new driveway access to the street;
4. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.

G. The use is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal.

OREGON REVISED STATUE 215.283(2)(L)

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

OREGON ADMINISTRATIVE RULE 660-033-0130 (10)

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law.

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under 215.213(1)(q) or 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

ACCESSORY FARM DWELLINGS

Marion County Code 17.136.030(B)

17.136.030 Dwellings permitted subject to standards.

The following dwellings may be established in the EFU zone with filing of the declaratory statement in MCC 17.136.100(C), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling pursuant to the procedures in Chapter 17.115 MCC.

B. Secondary Farm Dwellings. Secondary (accessory) dwellings customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.
2. There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.
3. The proposed dwelling will be located:
 - a. On the same lot or parcel as the primary farm dwelling; or
 - b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or
 - c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or
 - d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or
 - e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.
4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$40,000 gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years;

c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and a deed restriction filed with the county clerk requiring removal of the manufactured home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

OREGON REVISED STATUE 215.278)

215.278 Accessory dwellings for farmworkers; rules. (1) The Land Conservation and Development Commission shall revise administrative rules regarding dwellings customarily provided in conjunction with farm use to allow, under ORS 215.213 and 215.283, the establishment of accessory dwellings needed to provide opportunities for farmworker housing for individuals primarily engaged in farm use whose assistance in the management of the farm is or will be required by the farm operator on the farm unit.

(2) As used in this section:

(a) "Farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203.

(b) "Farmworker" means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the:

(A) Production of farm products;

(B) Planting, cultivating or harvesting of seasonal agricultural crops; or

(C) Forestation or reforestation of land, including but not limited to planting, transplanting, tubing, precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(c) "Farmworker housing" means housing:

(A) Limited to occupancy by farmworkers and their immediate families; and

(B) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.

(d) "Owner" means a person that owns farmworker housing. "Owner" does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

(e) "Relative" means:

(A) A spouse of the owner or operator; and

(B) An ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator.

OREGON ADMINISTRATIVE RULE 660-033-0130 (24)

660-033-0130

(24) Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling;

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract;

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules;

(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in 215.278 and not the meaning in 315.163; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years. In determining the gross

income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of 215.213(2)(a) or (b) or paragraph (A) of this subsection; or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in 660-033-0100.

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.

(f) Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for an accessory farm dwelling.