



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: January 18, 2017

Department: Public Works Agenda Planning Date: Jan. 12, 2017 Time required: 15 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) 16-014/ Klopfenstein.

Issue, Description & Background In Conditional Use Case 78-80, the property was approved for a commercial activity in conjunction with farm use to repair farm equipment and machines subject to certain conditions. The applicant filed the current application to modify two of those original conditions: condition #1, which limited the business by permitting only the servicing of farm related equipment and vehicles, and not servicing or repair of automobiles; and condition #3 which limited the number of employees to two. The planning director issued a decision approving the request subject to meeting certain conditions. The applicant filed a request for reconsideration and suggested changes to the conditions to define what constitutes a farm related vehicle and to modify the income reporting requirement. In the reconsidered decision some of the conditions were modified as requested, however, the request to include language stating that, "Failure to maintain 75% of sales to the local agricultural community in any given year, shall not, in itself, be grounds to terminate or disallow the use as approved, unless the sales to the local agricultural community fall below 51%," was not included. On August 12, 2016, the planning director's reconsidered decision was appealed to the hearings officer and a public hearing was held on September 7, 2016. On November 3, 2016, the hearings officer issued a decision denying the request after finding that the applicant had not proven by a preponderance of the evidence in the record that the previous conditional use was not abandoned under MCC 17.122.100. Under MCC 17.122.100, if a conditional use on a property is discontinued for a period of six months it is considered abandoned and no longer valid. At the hearing a letter was introduced from a farmer in the area stating that, due to the death of the owner, for the last couple years they have had to tow equipment to town for repairs. Based on this statement the hearings officer determined that the use was abandoned and the conditional use is no longer valid. In the appeal the applicant claims that the hearings office incorrectly interpreted and applied MCC17.122.100, by drawing inferences from the submitted letter and that the business was never abandoned. When the owner was no longer able to work his brother continued the business and since he could not perform all services some farmers in the area had to have work performed in town. The current owner purchased the property in January 2015 and has operated the business ever since. The applicant also argues that the hearings officer incorrectly interpreted some of the criteria in MCC 17.136.060(A) and (D). Finally, the applicant indicates they agree with the conditions in the reconsidered director's decision, with the addition of the following language being added to condition 3; "Failure to maintain 75% of sales to the local agricultural community in any given year, shall not, in itself, be grounds to terminate or disallow the use as approved, unless the sales to the local agricultural community fall below 51%."



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Financial Impacts:

None.

Impacts to Department
& External Agencies

None.

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
Planning director's decisions
Copy of CU78-80

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

THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. CU 16-014
Application of:) Clerk's File No.
WALTER & KAREN KLOPFENSTEIN) **Conditional Use**

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Walter and Karen Klopfenstein to modify conditions of approval in CU 78-80 to lift the employee cap and add nonfarm vehicle repair to a previously approved farm equipment and machinery repair business approved as a commercial activity in conjunction with farm use on a 1.00 acre parcel in an EFU (EXCLUSIVE FARM USE) zone at 12175 Selah Springs Road NE, Silverton, Marion County, Oregon (T7S, R1W, S04D, tax lot 700).

II. Relevant Criteria

Standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and Marion County Code (MCC), title 17, especially chapters 117.110, 17.119, 17.122 and 17.136.

III. Public Hearing

A public hearing was held on this matter on September 7, 2016. The Planning Division file was made part of the record. Planning file CU 78-80 was also made a part of the record. The record remained open until September 21, 2016 for applicants to submit additional information. The following persons appeared and provided testimony on the application:

1. Brandon Reich Planning Division
2. Donald Kelley Applicant's attorney

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

- Ex. 1 Two pages of petition signatures
- Ex. 2 Undated letter from Casey Stadel
- Ex. 3 September 13, 2016 letter from Darlene Huddleston, with attached map
- Ex. 4 September 19, 2016 letter from Mathew Buchheit

No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at hearing. However, the hearing notice did not mention the requested employee cap removal. On any appeal the employee cap removal must be put in the notice to ensure the public is properly informed about the scope of the conditional use proposal.

IV. 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 designated Primary Agriculture in the M CCP and zoned EFU. The primary purpose of the designation and zoning is to promote the continuation of commercial agricultural and forestry operations.
2. The subject property is in the northwest corner of the Selah Springs Road NE-Cascade Highway NE intersection. Case CU 78-80 approved a commercial activity in conjunction with farm use on the property for farm equipment and machinery repair. The property is a legal parcel for land use purposes.
3. EFU zoned properties in farm use surround the subject property.
4. The *Soil Survey of Marion County Area, Oregon* shows 100% high-value farm soils on the subject property.
5. Applicants ask to modify CU 78-80 condition of approval 1 which disallows commercial servicing, repair and maintenance of automobiles, and to remove condition of approval 3 that allows no more than two full time equivalent workers to be employed in the business at any one time.
6. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

The Marion County Public Works Land Development and Engineering Permits Section (LDEP) commented that approval of the proposed conditional use would allow modifications to conditions of approval for case CU 78-80 approving repair of equipment to also allow for the repair of automobiles on a 1.0 acre parcel in an EFU zone. LDEP provided the following informational requirements:

ENGINEERING REQUIREMENTS

- A. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. The following sub-requirements, numbered #1 and #2, pertain to access.
 - 1) The original approval stipulated access only from Selah Springs Road; no new access from Cascade Hwy will be allowed.
 - 2) It is required to clear brush and grassy vegetation on either side of the Selah Springs business access in support of adequate Intersection Sight Distance to the east, and including a small yet highly overgrown tree at the nearby intersection, as well as west down Selah Springs Road. Within 45 calendar days from the date of an approved *Notice of Decision*, the

Applicant shall either provide sufficient photographic proof of adequate clearing or contact PW Engineering for an inspection.

- B. The subject property is within the unincorporated area of Marion County and may be assessed Transportation System Development Charges (SDCs) per Marion County Ordinance #00-10R, which are due as a condition of issuance of building permits and/or change-in-use. Assessment of SDCs is typically based on building square footage.

(Emphasis in the original.)

The Marion County Building Inspection Division Onsite Sewage Disposal Program commented:

The tank at 12175 Selah Springs Road was installed and approved in 1978. Conditions for installation and use of the tank included:

- 1) Average daily sewage flow not greater than 200 gallons, and a tank large enough to hold a minimum of seven days sewage flow or 1000 gallons, whichever is larger. The anticipated use by two employees plus occasional customers was estimated at that time to be about 100 gallons per week. There is nothing in the record to indicate the two-employee limit was a condition of the holding tank permit.
- 2) A contract for pumping and disposal. The contract was to be renewed for as long as the tank was in use. As of this date, all holding tanks are required to maintain a pumping contract and submit an annual report to this office. Marion County has no record of a current pumping contract or annual report for this address.

My comments are as follows:

- 1) A PUMPING CONTRACT IS REQUIRED FOR THE LIFE OF THE HOLDING TANK. Current pumping records must be submitted for review by this office at this time. This will enable this office to provide meaningful input on how many additional employees could be added without exceeding the flow limit.
- 2) Currently, installation of a holding tank requires a volume of at least 1500 gallons and a daily flow limit of 200 gallons per day. This would correspond to a maximum of eight employees based on current standards of design flow (Table 2). However, the daily flow amount at this address is not known without the pumping records.
- 3) If daily flow rates are not found to be excessive, continued use of the 1000-gallon tank could be approved for additional employees. A 1500-gallon tank would not be required unless the use is found to be excessive.

Marion County Code Enforcement commented that the land use application is a result of a complaint received about an auto repair business operating at the site. "Inspection to the property and a conversation with the business owner confirms they are repairing personal auto's and no farm related. I'm not sure if land use can approve this."

The Silverton Fire District commented:

The Silverton Fire District has received notice to modify conditions of a conditional use from 1978 to allow for repair of automobiles. The Silverton Fire District has the following comments in relation to establishing a commercial repair facility. In order for the Fire District to allow approval of the parcel should be re-zoned from Exclusive Farm Use to something more appropriate. Also the building should be evaluated and change of use applied by the building department to ensure conformance with all appropriate codes for such occupancy. Any changes and or upgrades should be made to ensure fire and life safety since this is just a pole building not designed for such use. Once the building is classified and occupancy is designated by the building department then the Fire District can accurately look at the structure for Fire Code compliance.

Until these items have been addressed and complied with it is the Fire District's recommendation to not approve this use.

All other contacted agencies either did not respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

BURDEN OF PROOF

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 at 394-95 (1987):

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

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' burden is not met and the application is denied. If the evidence for every criterion is a breath in applicants' favor, the burden is met and the application is approved.

BACKGROUND

CU 78-80

2. In CU 78-80, Esther Utech (property owner) and Barry Butler applied for an allied commercial farm activity on the subject property to repair farm related equipment and machines. The reasons for request state:

I have equipment I repair of my own and have worked on the farm equipment of most of the people in the surrounding area and they have expressed interest in such a service in this area. This property has been made available [] through them.

Since this property is too small to farm (1 acre) and has been turned down for a sewer permit for a residence and is on a corner of an intersection of two county roads; this property has not and could not be effectively used for anything else in this area.

There is a wholesale plant nursery on the same intersection and there are many similar farm structures in the area so this structure would not be out of place there.

Since it is on an intersection of two county roads there will be two entrances or exits available for use, so there will be no effect on normal traffic flow.

The application was granted, with the following conditions of approval:

1. That the conditional use is granted only for the servicing of farm related equipment and vehicles. It does not include separate sales of any equipment or products aside from that customarily installed in the normal course of the service operation.
2. That all service work be confined to the approximate 40 by 50 foot building proposed.
3. That no more than two full time equivalent workers be employed in the business at any one time.
4. That access to the property be provided on Selah Springs Road only, away from its intersection with Cascade Highway. That adequate area be provided on the premises for off-street loading, turning, and parking to serve the use.
5. That approval for an acceptable means of sewage disposal to serve the use be obtained from the Department of Building Inspection prior to

issuance of building permits. That all required building permits be obtained from the Department of Building Inspection.

APPLICANT PROPOSALS AND PLANNING DIRECTOR DECISIONS

3. In the subject application, applicants ask to modify conditions of approval in CU 78-80. In their supporting statement, applicants explain they want to alter the existing commercial activity in conjunction with farm use by including nonfarm related automobile and pickup truck repair and by removing the current employee cap. Applicants state:

The Applicants adopt the discussion and findings of the hearings officer's decision in CU 78-80 to the extent that they are not inconsistent with this application. The business is currently conducted within an approximately 40 foot by 40 foot pole building. The site was previously occupied by one of the original applicants in CU 78-80 who recently retired, thus leaving the community without access to the services. The former occupant of the property served the community well for over thirty-seven (37) years and the community relied on the availability of this service in a rural setting. The next nearest similar service is in Silverton and requires transportation of the farm vehicles through busy city streets, including a school zone and a heavily used commercial district.

All farmers in the area do use farm equipment in their agricultural enterprises. Virtually every farm also uses automobiles and pickup trucks for many of the farm needs, e.g., farmers seldom drive a tractor or harvester into town to do banking, to shop at Wilco, etc. It must be recognized that passenger vehicles and pickups used in a farm context and by farmers are also a form of farm equipment or a farm vehicle. The Applicants should be allowed to operate or rent to a business that repairs passenger vehicles and pickup trucks as well as other farm equipment and heavy trucks. Indeed, the ability to service such vehicles is an important part of making the business commercially viable. It is also requested, that any business operating on the property be allowed to service non farm-related vehicles as long as the primary business is that of servicing farm-related equipment and vehicles.

There is also no reason that the number of employees should be limited to two (2) full-time equivalent workers. The size of the property and the building will limit the amount of work that can be done and will therefore dictate the number of employees. No farm-related purpose is served by limiting the number of employees to two (2) full-time equivalent workers.

4. The Planning Director approved the application but imposed conditions, including:

1. No more than 25% of the gross income generated by the business shall come from the repair of automobiles or other non-farm related vehicles. Farm vehicles are those vehicles licensed by the Oregon Department of Motor Vehicles as a farm vehicle, with a farm identification number on the vehicle title. All other vehicles are considered to be non-farm vehicles.
2. The applicant shall maintain detailed records of repairs that indicate the type of vehicle being repaired, the fee charged for the repair including parts and labor, and the date of repair. In the case of pickup trucks and other vehicles that may be used for non-farm purposes, the records shall also include the license plate number and farm identification number on the vehicle in order to qualify as farm vehicle repair income. The records shall be maintained on the premises and shall be made available to representatives of Marion County upon request.
3. The applicant shall submit income records to the Planning Director in June and December of each year for the previous six month period that indicates total gross income by month and percent of income that is generated from repairing farm vehicles. This report may be terminated at the discretion of the Planning Director when sufficient evidence of compliance with Conditions 2 and 3 has been provided.
5. Applicants asked the Planning Director to reconsider his decision and substitute the following conditions to make them conform more closely to Marion County Board of Commissioners (BOC) order 02-40, CU 01-38 (Rowat):
 1. Once a year, for three years, on March 15th the applicant shall submit a list to the Planning Division of all customers that purchased products or services at the site during the preceding calendar year. The list shall specify the name and address of the purchaser, or address of where the vehicle or equipment will be used, and whether it is for agricultural use. The report shall be signed and certified before a notary public. This report/list is required in 2017, 2018 and 2019. If, after the three years the use continues to comply with condition #2, no further reporting is required.
 2. Failure to maintain 75% farm-related sales and services to the local agricultural community, as determined by the Planning Manager from the yearly report/list, shall require the applicant to apply for an administrative review to reevaluate whether the use continues to constitute a commercial use in conjunction with farm use. Although the 75% farm-related sales is a reasonable standard for determining whether the use constitutes a commercial use in conjunction with farm use, failure of the use to maintain 75% of sales and services to the local agricultural community in a given year shall not, in itself, be grounds to terminate or disallow the use as approved, unless sales and services to the local agricultural community fall below 51%.

3. Farm vehicles are those owned by the operator of a farm in the local agricultural community and employed to some degree in some aspect of the farm operation.

6. Applicants' counsel states:

With regard to condition number 3 above, I am informed that most farmers do not register their vehicles as farm vehicles for a variety of reasons and that imposing such a requirement as a condition in this case would result in unfairness to the local farm community as well as the applicant. The intent of the ordinance and the statute is to allow a commercial use to benefit the local agricultural community. The previous condition would not do this but would have the opposite effect. The needs of the ordinance and the statute are met through the reporting requirements which are proposed.

7. The Planning Director's reconsideration decision includes the following conditions of approval:

1. No more than 25% of the gross income generated by the business shall come from the repair of non-farm automobiles or other non-farm related vehicles. Farm vehicles are those vehicles licensed by the Oregon Department of Motor Vehicles as a farm vehicle, with a farm identification number on the vehicle title, or vehicles registered to an individual who works on a farm and presents adequate documentation that the vehicle is used in some capacity to carry out the business of the farm operation. All other vehicles are considered to be nonfarm vehicles.
2. The applicant shall maintain detailed records of repairs that indicate the type of vehicle being repaired, the fee charged for the repair including parts and labor, and the date of repair. In the case of vehicles licensed as a farm vehicle, the license plate number and name of the farm the vehicle is licensed to is also required. In the case of pickup trucks and other vehicles that may be used for non-farm purposes, the records shall also include the license plate number, vehicle owner's name and address, and farm name and address, if the vehicle is associated with a farm. If no farm is noted, the vehicle will be considered a non-farm vehicle. The records shall be maintained on the premises and shall be made available to representatives of Marion County upon request.
3. The applicant shall submit an annual report of income records to the Planning Director by March 15th for the previous calendar year. The report shall include a list of customers with vehicle owners name, address vehicle is registered to, address and farm name where the vehicle is used, and whether it is for agricultural use. The report shall also include a summary that indicates total gross income and percent of income that is generated from repairing farm vehicles. The

report shall be signed by a person responsible for keeping the financial records of the business with the following certification: "I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements transmitted herewith are true; and acknowledge that any permit issued on the basis of this report may be revoked if it is found that any such statements are false".

This report is required in 2017, 2018, and 2019. If the use complies with Condition #1 for these three years, no further reporting is required.

8. Applicants' appeal states the Planning Director's decision imposes a higher standard for percentage of farm related business than previously set by the Board of Commissioners. Applicants state that condition 3 should include the following provision:

"Although the 75% farm-related sales is a reasonable standard for determining whether the use constitutes a commercial use in conjunction with farm use. [sic] Failure of the use to maintain 75% of sales to the local agricultural community in a given year shall not, in itself, be grounds to terminate or disallow the use as approved, unless sales to the local agricultural community fall below 51%."

PRELIMINARY MATTERS

APPLICATION

9. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. The statutory warranty deed recorded in county records at reel 3780, page 310 shows Walter and Karen Klopfenstein own the subject property and could file this application. MCC 17.119.020 is satisfied.
10. Under MCC 17.119.025 a conditional use application shall include signatures of certain people, including the owner of the subject property. Walter and Karen Klopfenstein signed the application. MCC 17.119.025 is satisfied.

AUTHORITY

11. Under MCC 17.119.100, the Planning Director has the power to decide applications for all conditional uses listed in MCC title 17. Under MCC 17.119.140, after the Planning Director's final action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed. The Planning Director's decision on reconsideration was mailed on July 29, 2016. Applicants appealed the decision on August 12, 2016. Applicants' appeal was timely.
12. Under MCC 17.119.150, if the director's decision is appealed, the hearings officer or shall conduct a public hearing in accordance with MCC chapter 17.111. The hearings officer may hear and decide this matter.

VIABILITY OF THE 1978 CONDITIONAL USE

13. In looking at a conditional use application, all applicable code provisions are examined. MCC 17.119.080 incorporates MCC 17.122.070 through 17.122.130 relating to variances into the conditional use process. These criteria "shall apply where applicable to the granting of conditional uses." Under MCC 17.122.100:

Discontinuance of the exercise of any right heretofore or hereafter authorized by any [conditional use] for a continuous period of six months shall be deemed an abandonment of such [conditional use], and the property affected thereby shall be subject to all the provisions and regulations of this title applicable to the district or zone in which such property is located at the time of such abandonment.

Conditional uses do not run in perpetuity and cannot be resurrected under an old approval if the use is discontinued for a period of six months. A new conditional use application would be required. Applicants' statement in support of the application says the previous occupant served the area "for over 37 years" and "recently retired" but does not say how "recently." In exhibit 2, submitted by applicants at hearing, Casey Stadel of Selah Springs Farms, states that the man who owned the business "died of cancer a few years ago." And, "[w]e have been lost without him in the last years and have had to tow broken equipment through town..." (Emphasis added.)

Six months is a short time period. Applicants' statements appear to narrow down the timeframe somewhat but by being open ended they also raise up the possibility of abandonment. Mr. Stadel's comments indicate the area has been without a farm machinery and equipment repair business at the site for a few years. **Applicants have not proven by a preponderance of evidence in the record that the previously approved conditional use was not abandoned under MCC 17.122.100. The conditional use application is denied.**

14. If, on appeal, applicants provide sufficient evidence showing the conditional use was not abandoned, the hearings officer provides advisory comments on the merits of the application.

CRITERIA

MCC 17.119.010

15. According to MCC 17.119.010, a conditional use is an activity that is similar to other uses permitted in the zone, but due to some of its characteristics that are not entirely compatible with the zone could not otherwise be permitted. Review of proposed conditional uses ensures the uses will be in consonance with the purpose and intent of the zone.

MCC 17.119.070

16. Under MCC 17.119.070, before granting a conditional use, the hearings officer shall determine:

- (A) That the hearings officer has the power to grant the conditional use;
- (B) That the conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
- (C) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

17. Under MCC 17.119.030, the hearings officer (and BOC) may hear and decide only those applications for conditional uses listed in MCC title 17. Applicants ask to change conditions of an approved commercial activity in conjunction with farm use in an EFU zone. MCC 17.136.050(D)(2) lists a commercial activity in conjunction with farm use subject to MCC 17.136.650(D) as a conditional use in the EFU zone. If the use as proposed qualifies as a commercial activity in conjunction with farm use, the hearings officer (and BOC) may approve the conditional use application if all criteria are met.

18. MCC 17.136.010 contains the EFU zone purpose statement:

The purpose of the EFU (exclusive farm use) 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 as defined in OAR 660-033-0020(8). These areas are generally well suited for large-scale farming. It is also applied to small inclusions of tracts composed predominantly of non-high-value farm soils to avoid potential conflicts between commercial farming activities and the wider range of non-farm uses otherwise allowed on non-high-value farmland. Moreover, to provide the needed protection within cohesive areas it is sometimes necessary to include incidental land unsuitable for farming and some pre-existing residential acreage.

To encourage large-scale farm operations the EFU zone consolidates contiguous lands in the same ownership when required by a land use decision. It is not the intent in the EFU zone to create, through land divisions, small-scale farms. There are sufficient small parcels in the zone to accommodate those small-scale farm operations that require high-value farm soils. Subdivisions and planned developments are not consistent with the purpose of this zone and are prohibited.

To minimize impacts from potentially conflicting uses it is necessary to apply to non-farm uses the criteria and standards in OAR 660-033-0130 and in some cases more restrictive criteria are applied to ensure that adverse impacts are not created.

Non-farm dwellings generally create conflicts with accepted agricultural practices. Therefore, the EFU zone does not include the lot of record non-farm dwelling provisions in OAR 660-033-0130(3). The provisions limiting non-farm dwellings to existing parcels composed on Class IV - VIII soils [OAR 660-033-0130(4)] are included because the criteria adequately limit applications to a very few parcels and allow case-by-case review to determine whether the proposed dwelling will have adverse impacts. The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283.

MCC 17.136 provisions are intended to carry out the purpose and intent of the EFU zone. If applicable MCC chapter 17.136 criteria are met, the proposed use would be in harmony with the purpose and intent of the zone. MCC 17.136(A) and (D) criteria are discussed below. The hearings officer finds that not all criteria are met.

19. The conditional use application is denied so no conditions are applied. If the BOC approves the proposal on any review, carefully considered conditions may be imposed.

MCC 17.136.060(A)

20. Under MCC 17.136.060(A), the following criteria apply to all conditional uses in the SA 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.

21. *Farm practices.* Under *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), a three-part analysis is required to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the county must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require that the county consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

Applicants did not identify specific farm or forest uses or farm or forest practices on surrounding lands devoted to farm or forest use. Applicants state they "adopt the discussion and findings of the hearings officer's decision in CU 78-80 to the extent they are not inconsistent with this application." Applicants' approach requires the hearings officer or other review authority to guess which findings applicants believe support this application and why. Applicants provided little information about on site activities and whether the potential expansion or deletion of previously approved and specifically limiting conditions will have significant negative impacts on area farm and forest practices. Applicants do not provide substantial evidence that allows the county to conduct a proper *Schellenberg* analysis. The hearings officer would find this criterion is not met.

22. *Adequate services.* Utility services, such as electric and telephone services are currently available to the area. Police services are provided by Marion County. Applicants do not discuss on-site water service, but should provide this information on any appeal to ensure a complete record.

Subsurface sewage disposal is not allowed on the subject property. The prior occupant installed a 1,000-gallon wastewater holding tank on the property in 1978. Installation and use conditions for the tank included an average daily sewage flow not greater than 200 gallons and a seven-day storage capacity. At that time, the anticipated use by two employees plus occasional customers was estimated at about 100 gallons per week. A pumping and disposal contract to be renewed for as long as the tank was in use was required. Holding tank users are now required to install 1,500-gallon tanks with a 200-gallon daily flow limit, have a pumping contract, and submit an annual pumping report to the Marion County On-site Sewage Disposal Program office. The county has no record of a current pumping contract or annual report for the current on-site tank. The On-site Sewage Disposal Program office also noted that current 1,500-gallon holding tank and 200-gallon per day flow limit corresponds to a maximum of eight employees.

Based on the size of the current 1,000-gallon holding tank alone, it would seem necessary to cap employees at somewhere around five to six (roughly two-thirds of 8 employees based on a septic tank two-thirds the size of a currently required 1,500-gallon tank). Applicants accepted a six employee cap as reasonable at hearing. Employees may need to be further capped depending on the number of customers generated by nonfarm vehicle repairs.

Applicants provided a farm/nonfarm breakdown of repair and service work for May 2016. Of 86 customers in May 2016, 55 were nonfarm customers. Applicants need to show that adequate septic service can be provided with the requested extra employees and the significant increase in customers attributable to the nonfarm side of the business. If applicants provide adequate specific information on anticipated septic flow to show feasibility of the use, conditions of approval need to include provision of the most current and future pumping records, a pumping contract for the life of the holding tank, and review and approval by the Marion County On-site Sewage Disposal Program office.

The subject property fronts Cascade Highway and Selah Springs Road. Cascade Highway, according to the MCCP Marion County Rural Transportation System Plan (MCRTSP) appendix B, 2012 update, is a two-lane arterial road with 3' paved shoulders and 28' paved travel surface within a 60' right-of-way. The road is in good condition and operates at level of service (LOS) B. Selah Springs Road is a two-lane local road with 1' gravel shoulders and 20' paved travel surface within a 40' right-of-way. The road is in good condition and operates at LOS A. No access to Cascade Highway was allowed in the prior case and Marion County LDEP will not allow Cascade Highway access now. LDEP is requiring vegetation removal to improve sight distances. Applicants do not discuss or estimate the number of anticipated increased daily traffic trips to the property. Applicants just say the size of the parcel and on-site building will limit the size of the use even though added employees could work in shifts, generating more employee and customer traffic. Lack of specificity like this is usually cause for concern (see the on-site sewage discussion above). But, here property access is off a minor road operating at LOS A, and it would take a tremendous increase in traffic to bring the road to LOS D or F. As long as applicants take access only from Selah Springs Road NE, and clear and maintain vegetation to meet sight distance requirements, roadway services would be adequate.

The Silverton Fire District has concerns about the proposed use because the operation is in "just a pole building not designed for such use." The Fire District does not believe it can accurately look at the structure for Fire Code compliance until the building department evaluates it and ensures conformance with appropriate occupancy codes. Once the building is classified and occupancy is designated, the Fire District says changes or upgrades can be made to ensure proper fire and life safety compliance. Until then, the Fire District recommends denial of the application. With conditions requiring Building Inspection review and fire protection plan approval by the Silverton Fire District within 60 days from the effective date of an approval order the criterion might be met.

Applicant should further address sewage disposal, water availability and fire/life safety concerns on any appeal to the BOC.

23. *Significant adverse impact.* The subject property is not within an identified special watershed, groundwater limited, floodplain, geologic

hazard, wildlife or big game habitat area. Subsurface sewage disposal is not allowed on the subject property. On-site sewage storage is regulated by the building department, and applicants must comply with all applicable requirements. Applicants should address containment, storage and disposal of products that could contaminate land or groundwater resources if released into the environment.

24. *Noise.* Applicants did not address noise attributable to the expansion of the business to determine if nonfarm vehicle repair and staff increases will lead to noise generation in excess that allowed in MCC chapter 8.45 (Noise). Limited hours of operation and other noise mitigating restrictions should be discussed because lifting the employee cap and increasing the customer base could result in compounding noise producing activities and lead to shift work which could increase noise exposure.
25. *Water impounds/mineral and aggregate sites.* No MCCP identified mineral and aggregate sites or potential water impounds are on or near the property.

MCC 17.136.060(D)

26. Under MCC 17.137.060(D), commercial activities in conjunction with farm use are subject to the following criteria:
 1. The commercial activity must be primarily a customer or supplier of farm uses.
 2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.
 3. The agricultural and commercial activities must occur together in the local community.
 4. The products and services provided must be essential to the practice of agriculture.
27. *Primarily a customer or supplier of farm uses.* The original conditional use approval allowed only farm related equipment and machine service and repair, making the primary connection to farm use a pretty easy determination. Adding the nonfarm component makes the determination more difficult. Identifying farm versus nonfarm vehicles can be complicated, as shown by applicants and the Planning Directors back and forth opinions. The Planning Director first looked at Oregon Driver and Motor Vehicle Services Division (DMV) issued farm vehicle registration plates as the way to distinguish farm and nonfarm vehicles. Applicants protested that not all farm use vehicles are registered under farm plate statutes, and using that as a sole determiner would not properly distinguish between farm versus nonfarm vehicles and equipment. The Planning Director revised requirements to also include vehicles registered to individuals who work on a farm and present adequate documentation that the vehicle is used in "some capacity"

to carry out farm operation business. If the first attempt was too restrictive, this attempt may be overbroad because it includes vehicles used in a farm operation in "some capacity." Some capacity is a low bar, and it seems a condition should at least require qualifying vehicles to be "primarily" used in a farm operation. More information is needed to allow a decision maker to properly craft a definition of farm and nonfarm vehicles, equipment and machines.

The Planning Director approved a 75%/25% farm/nonfarm gross income split as a way of determining whether farm users are the primary users of applicants' services. A 75%/25% split is used for farm stands and some other farm zone uses. This may work well in cases where a business sells candy bars, cans of pop and t-shirts along with its produce, but may not work as well in the context of farm and nonfarm vehicle service and repair. Farm equipment is often large and expensive and repairs and parts replacement may also be large and expensive, leaving it difficult fashion a method of ensuring the farm user is the primary customer. Applicants provided farm/nonfarm vehicle work breakdown for May 2016 that the Hearings Officer accepts on its face for example purposes. The breakdown illustrates potential difficulties in evaluating the farm versus nonfarm primary customer criterion.

In May 2016, applicants provided services 86 times with gross receipts of \$28,718.58. Applicant attributed \$15,053.27 to farm related repairs, for a 52.4%/47.6% farm/nonfarm income percentage. But, of the 88 repairs, 31 were farm-related and 55 were nonfarm-related, for a 36% farm/64% nonfarm customer split. Who then is the business primarily serving, farmers or non-farmers? More information on the nature of the business may help the BOC evaluate this criterion and fashion a method of ensuring it can be met.

28. *Enhance farming enterprises in local agricultural community.* Having a nearby farm repair business will likely save time and money for local agricultural enterprises. But, overrunning the business with nonfarm customers may make the operation less efficient for farm customers. Determining how to keep the business primarily beneficial for agricultural users requires more information and evaluation.
29. *Occur together in the local community.* The area of the subject property is an area of farm zoning and farm uses. The agricultural and commercial activities will occur together in the local community, but the city of Silverton is nearby and urban customers may also be attracted to the business at this EFU zoned site.
30. *Products and services essential to the practice of agriculture.* Farms can be highly mechanized and keeping equipment in running order is important to farm operations. But, it is yet to be determined whether farm or nonfarm users will be primary users of the business, and thus whether the business is essential to the practice of agriculture.

31. Under MCC 17.110.680:

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.

This application resulted from a complaint of an automobile repair business operating in a farm zone. Inspection of the premises by a Marion County Code Enforcement officer revealed that all automobile and no farm repair was taking place on the premises. If an adequate method of allotting, tracking, and enforcing a proper farm/nonfarm split can be crafted, approving this expansion could resolve the code enforcement issue.

CONCLUSION

32. Applicants must first prove their proposal can be considered as a modification of the previously approved conditional use rather than as a new conditional use. If the previous use was abandoned by a period of discontinuance for six months or more, a fresh conditional use application is required. Whether considered a new use or an expansion or alteration of an old use, applicants must provide enough detailed information to give the decision maker the ability to render a proper decision.

VI. Order

It is hereby found that applicants have not met the burden of proving applicable standards and criteria for approval of a conditional use application to modify conditions of approval for a commercial activity in conjunction with farm use have been met. 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 18th day of November 2016. 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 3rd day of November 2016.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Darlene Huddleston
12142 Selah Springs Rd. NE
Silverton, OR 97381

Lorenzo & Tammy Perez
3871 Brush Creek Dr. NE
Silverton, OR 97381

Earl & Colleen Veach
P.O. Box 1944
Silverton, OR 97381

Walter & Karen Klopfenstein
3732 Cascade Highway NE
Silverton, OR 97381

Matthew Buchheit
6122 Brush Creek Dr. NE
Silverton, OR 97381

Ron Parvin
Silverton Fire District
819 Rail Way NE
Silverton, OR 97381

Agencies Notified

Planning Division (via email)
Public Works Engineering (via email)
Building Inspection (via email)
Code Enforcement (via email)
Environmental Services (via email)
AAC Member No. 7

Dawn Olson
15056 Quall Road
Silverton, OR 97381

James Sinn
3168 Cascade Hwy NE
Silverton, OR 97381

Donald Kelley
110 North Second Street
Silverton, OR 97381

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 3rd day of November 2016, and that the postage thereon was prepaid.



Christi Klug
Secretary to Hearings Officer

RECEIVED

NOV 17 2016

KELLEY ♦ KELLEY

DONALD M. KELLEY

PHILIP T. KELLEY

WESLEY N. GARCIA

MARION COUNTY

BOARD OF COMMISSIONERS

Attorneys and Counselors

110 NORTH SECOND STREET
SILVERTON, OREGON 97381

AREA CODE 503
TELEPHONE 873-8671

November 15, 2016

Marion County Board of Commissioners
PO Box 14500
Salem, Oregon 97309

Re: Conditional Use 16-014

Dear Commissioners:

I represent the applicants, Walter and Karen Klopfenstein, in an application for a conditional use to modify the conditions of approval in CU-78-80. The request was to change the employee cap and to add some non-farm vehicle repair to the already approved farm equipment and machinery repair business. The planning staff approved the application subject to certain conditions. The applicants appealed one of the conditions to the Hearings Officer. The Hearings Officer denied the application in full. The purpose of this letter is to appeal the Hearings Officer's decision in CU-16-014.

The Hearings Officer erred in the following respects:

1. The hearings officer incorrectly interpreted and applied MCC 17.122.100.

The Hearings Officer draws evidentiary inferences from a letter from Mr. Stadel which were incorrect and were unnecessarily drawn. The references in Mr. Stadel's letter do not indicate an abandonment. The conditional use granted in CU-78-80 was never abandoned. Mr. Barry Butler, who died on August 13, 2016, was ill for a long time, but continued to work on site until August 8, 2016. His brother, Alan (Jack) Butler, continued repairs of farm vehicles and equipment on site until January 24, 2015, when the applicants purchased the property. Mr. Buchheit, who currently owns the repair business, has been on site since February 6, 2016. The application in this case was filed on May 11, 2016. The references in Mr. Stadel's letter do not indicate an abandonment. The Hearings Officer's assumption was incorrect. It is true that Mr. Butler's brother could not provide all the service that he and Barry Butler had provided together, and that did impact the farm community.

MARION COUNTY CLERK

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2a. The hearings officer incorrectly interpreted and applied MCC 17.136.060(A).

In this application, the applicant accepted the findings and statements in the Hearings Officer's decision of CU-78-80 that included a discussion of the on-site activities. The application in this case also describes the desired activities as "to include the commercial service, repair and maintenance of automobiles" in addition to the permittee to use his in CU-78-80.

2b. Adequate services was considered in the original application.

2c. On-site water is by an on-site well, which is more than adequate for the minimal needs of this business.

2d. On-site sewage disposal is by a holding tank, which is required to be pumped regularly. The Hearings Officer recognized that the existing system was adequate for the proposed number of employees which the applicant agreed could be capped at 6. A condition of approval limiting the number of employees and requiring regularly pumping is appropriate and acceptable. The Hearings Officer indicates that conditions of approval need to include provision of the most current and future pumping records. This seems unnecessary since the system cannot function without pumping.

2e. The Hearings Officer states that "As long as the applicants take access only from Selah Springs Road NE, and clear and maintain vegetation to meet sight distance requirements, road services would be adequate". Those issues are already conditions of approval in CU-78-80 and the applicant has no objection to them.

2f. The applicant has no objection to a conditional requirement building inspection review and a fire protection plan.

2g. Matthew Buchheit, the owner of the business on the site, is bound by environmental laws to contain, store and dispose of products that could contaminate land or ground water resources. All such products are recovered and disposed of by burning in an oil heater. The applicant has no objection to a condition requiring proper containment, storage and disposal of products that could contaminate the land or ground water resources, but it is already required by state law.

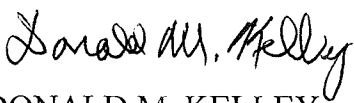
2h. The existing use has been on-site for over 37 years with no history of complaints about noise by neighbors. Although it is projected that there will be more business at the site, the conditions of approval of CU-78-80 require that the actual repairs be performed inside the building. Further, there are no residences in close proximity to the subject use.

3. The hearings officer incorrectly interpreted and applied MCC 17.136.060(D).

The applicant agrees with the conditions approved by staff in this case with the additional language "Although the 75% farm-related sales is a reasonable standard for determining whether the use constitutes a commercial use in conjunction with farm use. Failure of the use to maintain 75% of sales to the local agricultural community in a given year shall not, in itself, be grounds to terminate or disallow the use as approved, unless sales to the local agricultural community fall below 51%."

Yours truly,

KELLEY ♦ KELLEY


DONALD M. KELLEY

DMK:kdm



Marion County
OREGON

**APPEAL OF PLANNING
DIVISION DECISION**

Marion County Planning Division
5155 Silverton Rd. NE
Salem, Oregon 97305
(503) 588-5038

Fee: \$250

NAME(S): <u>Walter Klopfenstein</u>	ADDRESS, CITY, STATE, ZIP <u>c/o Don Kelley, 110 N. Second St. Silverton, Oregon 97381</u>
DATE SUBMITTED: <u>August , 2016</u>	APPLICATION CASE NO: <u>CU 16-014</u>

Notice of Appeal: Every notice of appeal should contain:

1. How the decision is factually or legally incorrect; or
2. Present new facts material to the decision; or
3. The specific reasons for the appeal.

I/we are filing this appeal because (attach additional pages if needed): it imposes a higher standard for the percentage of farm related business than that previously set by the Board of Commissioners. Condition 3 should include the following provision:

"Although the 75% farm-related sales is a reasonable standard for determining whether the use constitutes a commercial use in conjunction with farm use. Failure of the use to maintain 75% of sales to the local agricultural community in a given year shall not, in itself, be grounds to terminate or disallow the use as approved, unless sales to the local agricultural community fall below 51%."

FOR OFFICE USE ONLY:	
Appeal accepted by: <u>PD</u>	Date: <u>8/12/16</u>
Case Number: <u>C416-014</u>	
Filing fee <input checked="" type="checkbox"/>	
File attached <input checked="" type="checkbox"/>	

NOTICE OF RECONSIDERATION

CONDITIONAL USE CASE NO. 16-014

APPLICATION: Application of Walter and Karen Klopfenstein for a conditional use to modify conditions of approval of Conditional Use Case #78-80 (CU78-80) to allow the repair of automobiles on a 1 acre parcel in an EFU (Exclusive Farm Use) zone located at 12175 Selah Springs Rd NE, Silverton (T7S; R1W; Section 04D; tax lot 700).

DECISION: Upon request by the applicants, the Planning Director for Marion County has **RECONSIDERED** and **APPROVED** the above-described Conditional Use application subject to certain modified conditions. See #9 in the Findings and Conclusions section for more information on the request for reconsideration and modified conditions.

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **August 15, 2018**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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: The following conditions must be met before a building permit can be obtained or the approved use established:

1. No more than 25% of the gross income generated by the business shall come from the repair of non-farm automobiles or other non-farm related vehicles. Farm vehicles are those vehicles licensed by the Oregon Department of Motor Vehicles as a farm vehicle, with a farm identification number on the vehicle title, or vehicles registered to an individual who works on a farm and presents adequate documentation that the vehicle is used in some capacity to carry out the business of the farm operation. All other vehicles are considered to be non-farm vehicles.
2. The applicant shall maintain detailed records of repairs that indicate the type of vehicle being repaired, the fee charged for the repair including parts and labor, and the date of repair. In the case of vehicles licensed as a farm vehicle, the license plate number and name of the farm the vehicle is licensed to is also required. In the case of pickup trucks and other vehicles that may be used for non-farm purposes, the records shall also include the license plate number, vehicle owner's name and address, and farm name and address, if the vehicle is associated with a farm. If no farm is noted, the vehicle will be considered a non-farm vehicle. The records shall be maintained on the premises and shall be made available to representatives of Marion County upon request.
3. The applicant shall submit an annual report of income records to the Planning Director by March 15th for the previous calendar year. The report shall include a list of customers with vehicle owners name, address vehicle is registered to, address and farm name where the vehicle is used, and whether it is for agricultural use. The report shall also include a summary that indicates total gross income and percent of income that is generated from repairing farm vehicles. The report shall be signed by a person responsible for keeping the financial records of the business with the following certification: "*I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements transmitted herewith are true; and acknowledge that any permit issued on the basis of this report may be revoked if it is found that any such statements are false*". This report is required in 2017, 2018, and 2019. If the use complies with Condition #1 for these three years, no further reporting is required.
4. In addition to any other remedies available to the county, failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

5. **Within 30 days of the final decision**, the applicant shall submit evidence of an annual contract with a septic tank pumping company for regular pumping of the holding tank. Pumping records shall be maintained and an annual report of pumping and maintenance shall be submitted to Marion County Building Inspection, to the satisfaction of the Building Official.
6. **Prior to hiring any employees**, the applicant shall submit all records of past pumping of the holding tank for review by a Marion County Building Inspection Division sanitarian. The number of employees allowed for the business shall be limited to the capacity of the holding tank on the property, as determined by Marion County Building Inspection.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect 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 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicant should contact Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, 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 **August 15, 2016**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 16, 2016** unless further consideration is requested.

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. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the north side of Selah Springs Road at the intersection with Cascade Highway NE. The property was the subject of Conditional Use Case #78-80, which approved a commercial activity in conjunction with farm use, and is considered a legal parcel.
3. Surrounding uses consist of properties in farm use in an EFU zone.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is high-value farm soils.
5. The applicant is proposing to expand an existing commercial activity in conjunction with farm use to include repair of automobiles and pickup trucks and to remove the restriction on the number of employees allowed.
6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Building Inspection commented that the holding tank on the property needs to have a current pumping contract and submit annual reports of pumping records.

Marion County Code Enforcement commented that an auto/non-farm related vehicle repair business is being operated on the site.

Silverton Fire District commented that the use and structure would have to comply with fire code requirements.

7. In order to approve a commercial activity in conjunction with farm use, or expand an existing activity, the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). These include:
- (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be essential to the practice of agriculture.*
8. Repair of farm vehicles and equipment provides a necessary service to the local agricultural community. Due to the size of some farm equipment, local repair service is necessary close to farm operations due to difficulties in transporting the vehicles. Maintaining this equipment in good working order is essential to the practice of agriculture. The applicant states that automobiles and pickup trucks should be considered to be farm equipment or farm vehicles because they are sometimes used by farm operators for activities such as banking and shopping in an urban setting, where tractors and other large farm equipment and vehicles are unsuitable. However, as these vehicles are driven to urban areas for banking and shopping, they can also be driven to auto repair shops located in commercial zones.

The subject property is located less than one mile from Silverton's city limits and approximately two miles from downtown Silverton, where several auto repair businesses are located. The expanded use, as proposed, would provide services to types of vehicles that are more often used for non-farm business activities, are not unique or essential to farming, and the servicing of these types of vehicles cannot be reasonably restricted to serving agricultural customers in the local area. The proposed expansion is not essential to the practice of agriculture. While the vehicles serviced provide a convenience to farmers, use of these vehicles is not essential to a farm operation. The Land Use Board of Appeals (LUBA) found, in LUBA No. 94-104, that "*while farmers must eat and farm equipment frequently operates on gasoline, that is not sufficient to make grocery stores and gas stations commercial activities in conjunction with farm use. The connection must be closer to the 'essential practice of agriculture.'*" Likewise, while farmers may use automobiles and pickup trucks to perform some activities associated with the farm operation, that is not sufficient to make automobile repair shops commercial activities in conjunction with farm use.

9. **On July 8, 2016 the applicant requested a reconsideration of the conditions of approval in the Notice of Decision dated June 28, 2016 requiring that repair of vehicles used for non-farm purposes can only be allowed as an incidental activity and should not result in generation of more than 25% of the total income of the repair business. The applicant cited Conditional Use Case CU01-38 as a model that should be followed, where the Marion County Board of Commissioners found that while the standard of 75% of sales to commercial farm operators is a reasonable interpretation of "primarily a customer or supplier of farm uses", the proposal was permitted subject to a condition of approval that failure to maintain 75% agricultural sales would not be sole grounds for revocation unless sales fall below 51% of total sales. In the case of CU01-38, the applicant submitted evidence that 75% agricultural sales had been achieved in the year prior to submission of the conditional use application and stated an intent to further expand farm-related sales in the future, up from 64.85% farm-related sales previously. The file indicates that the applicants were not able to increase their farm-related business sufficiently to meet the conditions of approval and later moved the operation to a location in Linn County.**

Since 2014, Marion County has issued 11 conditional use decisions for commercial activities in conjunction with farm use. In nine cases, the applicant described products or services sold that were clearly products that were only used by commercial farm operations or were sold on a wholesale basis, stating that from 81% to 100% of gross sales were to farm-related businesses and the approval was conditioned to require to

continue operation as described in the application. In a tenth case, the commercial activity was a winery that did not meet all of the criteria as a standard winery and was permitted subject to criteria applicable primarily to winery-type activities. The 11th case is a trailer sales operation in which the applicant did not specify the precise proportion of farm-related sales income because the business was not yet established on the property and an estimate of sales would have been based on speculation. No condition was included to require a certain proportion of sales to be farm-related. However, this case was not initiated as a result of code enforcement.

In the subject situation, a farm equipment repair business was originally approved for the property in 1978. The original approval did not require a special proportion of sales and service to be farm-related, nor were records required to be maintained to show what the actual proportion actually was. The original business owner retired and a new business recently moved onto the property to continue vehicle repair services. Information provided by the applicant regarding the proportion of automobile and pickup truck service compared to farm equipment service provided by the business for the month of May 2016 indicates that 47.6% of the gross income is from repair of non-farm vehicles. Marion County Code Enforcement commented that a visit to the property found that no farm equipment or farm vehicles were being repaired at the subject property. Because the nature of vehicle repair services is not clearly and solely applicable to farm vehicles and is very easily extended to repair of automobiles and pickup trucks that are for personal use, a higher level of scrutiny is necessary to ensure that the commercial activity is currently and can reasonably be expected to continue to provide services primarily to farming activities. Also, the nature of farming activities in the local area blurs the line between vehicles used only for farming activities and vehicles that are often used for farming activities, but are also used for non-farm and personal use. In order for small trucks and automobiles that are not registered with the Oregon Department of Motor Vehicles as farm vehicles to be considered farm vehicles there must be some documentation collected for these vehicles that shows they are used at least part time in a farm operation. One indicator is if the vehicle is registered to a farm business. If the vehicle is registered to an individual, other documentation should be provided to indicate that the registered owner of the vehicle is employed by a farm business. If this documentation is not available, then the vehicle will be considered to be a non-farm vehicle and income from service to the vehicle must be counted as non-farm-related repair. In order to allow the business to continue on the property, repair of non-farm vehicles must be limited to 25% of total income and documentation must be provided to show that this limitation is being observed.

The applicant requested revision of Conditions 1, 2, and 3 to be similar to the conditions of approval adopted by the Board of Commissioners in CU01-38. Staff reviewed the requested wording along with the findings stated above and made revisions to Conditions #1, #2, and #3 that contain some of the language requested by the applicant.

The use can be managed to meet the criteria for operating a commercial activity in conjunction with farm use, subject to conditions.

10. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
 - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
 - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - (e) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

11. Because a repair business was approved and has operated on the property since 1978, repair of farm vehicles on the property is not expected to have a negative impact on nearby lands devoted to farm use, as long as the conditions of approval are met. CU78-80 required installation of a holding tank to provide for wastewater treatment for the business. A limit of two employees was placed on the business because of the limited capacity of this type of waste treatment improvement. The Oregon Department of Environmental Quality requires a pumping contract for the tank and submission of records showing that the holding tank is maintained in accordance with state and federal regulations. There is no evidence in Marion County records that this has been done since 1978. Evidence must be submitted by the applicant to show that these requirements are being met. The proposal can meet #10(a), subject to conditions. The Silverton Fire District serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #10(b). The property is not within a wildlife habitat area or geologically hazardous area. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air or water quality. Noise generated by the proposed activity should be comparable to agricultural activities. The proposal meets #10(c) and (d). There are no potential water impoundments or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #10(e) is met.
12. MCC 17.110.680 states that:
- “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 would correct the violation.”
- In this case, an active code enforcement case is present on the subject parcels. Approval of this conditional use would resolve the code enforcement currently in progress on the property.
13. Based on the above findings it has been determined that the applicant’s request meets all applicable criteria for a vehicle repair business as a commercial activity in conjunction with farm use and is, therefore, **APPROVED**.

Warren Jackson
Planning Director

Date: July 29, 2016

If you have any questions regarding this decision contact Lisa Milliman 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.

KELLEY ♦ KELLEY

Attorneys and Counselors

110 NORTH SECOND STREET
SILVERTON, OREGON 97381

DONALD M. KELLEY
PHILIP T. KELLEY
WESLEY N. GARCIA

AREA CODE 503
TELEPHONE 873-8671

July 8, 2016

Lisa Milliman
Marion County Planning Division
5155 Silverton Road NE
Salem, Oregon 97305

Sent via Email ONLY: lmilliman@co.marion.or.us

**Re: Conditional Use Case No. 16-014
Walter and Karen Klopfenstein**

Dear Lisa:

As you know I represent the interest of the applicants in the above referenced conditional use case. Please consider this letter their request for reconsideration of the conditions which are part of the approval. Specifically, the applicant's request reconsideration of conditions 1, 2 and 3 in order to make them conform more closely to the board of commissioners decision in order number 02-40 CU 01-38, the application of Larry and Karen Rowat. Specifically, the conditions in the subject case should be revised to reflect the board of commissioners methodology in conditions 9 and 10 of the Rowat decision. Specifically, the conditions should be written as follows:

1. Once a year, for three years, on March 15th the applicant shall submit a list to the Planning Division of all customers that purchased products or services at the site during the preceding calendar year. The list shall specify the name and address of the purchaser, or address of where the vehicle or equipment will be used, and whether it is for agricultural use. The report shall be signed and certified before a notary public. This report/list is required in 2017, 2018 and 2019. If, after the three years the use continues to comply with condition #2, no further reporting is required.
2. Failure to maintain 75% farm-related sales and services to the local agricultural community, as determined by the Planning Manager from the yearly report/list, shall require the applicant to apply for an administrative review to reevaluate whether the use continues to constitute a commercial use in conjunction with farm use. Although the 75% farm-related sales is a reasonable standard for determining whether the use constitutes a commercial use in conjunction with farm use, failure of the use to maintain 75% of sales and services to the local

Lisa Milliman
Marion County Planning Division
July 8, 2016
Page 2

agricultural community in a given year shall not, in itself, be grounds to terminate or disallow the use as approved, unless sales and services to the local agricultural community fall below 51%.

3. Farm vehicles are those owned by the operator of a farm in the local agricultural community and employed to some degree in some aspect of the farm operation.

With regard to condition number 3 above, I am informed that most farmers do not register their vehicles as farm vehicles for a variety of reasons and that imposing such a requirement as a condition in this case would result in unfairness to the local farm community as well as the applicant. The intent of the ordinance and the statute is to allow a commercial use to benefit the local agricultural community. The previous condition would not do this but would have the opposite effect. The needs of the ordinance and the statute are met through the reporting requirements which are proposed.

Thank you for your courtesy and thoughtful reconsideration.

Please call or write if you have questions or comments.

This letter will also serve as my client's extension of the 150 day time limit for review.

Yours truly,

KELLEY ♦ KELLEY

DONALD M. KELLEY

DMK:kdm

RENOTICE OF DECISION – SCRIVNER’S ERROR

CONDITIONAL USE CASE NO. 16-014

The original decision approving Conditional Use 16-014, mailed on June 21, 2016, listed an incorrect Expiration Date, Appeal Date and Effective Date.

Due to these errors, a new Notice of Decision is being issued. No other changes have been made to the Decision. If you have any questions, please contact Lisa Milliman, Marion County Planning Division, at (503) 588-5038 or at planning@co.marion.or.us.

APPLICATION: Application of Walter and Karen Klopfenstein for a conditional use to modify conditions of approval of Conditional Use Case #78-80 (CU78-80) to allow the repair of automobiles on a 1 acre parcel in an EFU (Exclusive Farm Use) zone located at 12175 Selah Springs Rd NE, Silverton (T7S; R1W; Section 04D; tax lot 700).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions.

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **July 13, 2018**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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: The following conditions must be met before a building permit can be obtained or the approved use established:

1. No more than 25% of the gross income generated by the business shall come from the repair of automobiles or other non-farm related vehicles. Farm vehicles are those vehicles licensed by the Oregon Department of Motor Vehicles as a farm vehicle, with a farm identification number on the vehicle title. All other vehicles are considered to be non-farm vehicles.
2. The applicant shall maintain detailed records of repairs that indicate the type of vehicle being repaired, the fee charged for the repair including parts and labor, and the date of repair. In the case of pickup trucks and other vehicles that may be used for non-farm purposes, the records shall include the license plate number and farm identification number on the vehicle title in order to qualify as farm vehicle repair income. The records shall be maintained on the premises and shall be made available to representatives of Marion County upon request.
3. The applicant shall submit income records to the Planning Director in June and December of each year for the previous six month period that indicates total gross income by month and percent of income that is generated from repairing farm vehicles. This condition may be terminated at the discretion of the Planning Director when sufficient evidence of compliance with Conditions 2 and 3 has been provided.
4. In addition to any other remedies available to the county, failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.
5. **Within 30 days of the final decision**, the applicant shall submit evidence of an annual contract with a septic tank pumping company for regular pumping of the holding tank. Pumping records shall be maintained and an annual report of pumping and maintenance shall be submitted to Marion County Building Inspection, to the satisfaction of the Building Official.

6. **Prior to hiring any employees**, the applicant shall submit all records of past pumping of the holding tank for review by a Marion County Building Inspection Division sanitarian. The number of employees allowed for the business shall be limited to the capacity of the holding tank on the property, as determined by Marion County Building Inspection.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect 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:

7. The applicant should contact Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, 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 **July 13, 2016**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 14, 2016** unless further consideration is requested.

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. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the north side of Selah Springs Road at the intersection with Cascade Highway NE. The property was the subject of Conditional Use Case #78-80, which approved a commercial activity in conjunction with farm use, and is considered a legal parcel.
3. Surrounding uses consist of properties in farm use in an EFU zone.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is high-value farm soils.
5. The applicant is proposing to expand an existing commercial activity in conjunction with farm use to include repair of automobiles and pickup trucks and to remove the restriction on the number of employees allowed.
6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Building Inspection commented that the holding tank on the property needs to have a current pumping contract and submit annual reports of pumping records.

Marion County Code Enforcement commented that an auto/non-farm related vehicle repair business is being operated on the site.

Silverton Fire District commented that the use and structure would have to comply with fire code requirements.

7. In order to approve a commercial activity in conjunction with farm use, or expand an existing activity, the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). These include:

- (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
- (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
- (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
- (d) *The products and services provided must be essential to the practice of agriculture.*

8. Repair of farm vehicles and equipment provides a necessary service to the local agricultural community. Due to the size of some farm equipment, local repair service is necessary close to farm operations due to difficulties in transporting the vehicles. Maintaining this equipment in good working order is essential to the practice of agriculture. The applicant states that automobiles and pickup trucks should be considered to be farm equipment or farm vehicles because they are sometimes used by farm operators for activities such as banking and shopping in an urban setting, where tractors and other large farm equipment and vehicles are unsuitable. However, as these vehicles are driven to urban areas for banking and shopping, they can also be driven to auto repair shops located in commercial zones.

The subject property is located less than one mile from Silverton's city limits and approximately two miles from downtown Silverton, where several auto repair businesses are located. The expanded use, as proposed, would provide services to types of vehicles that are more often used for non-farm business activities, are not unique or essential to farming, and the servicing of these types of vehicles cannot be reasonably restricted to serving agricultural customers in the local area. The proposed expansion is not essential to the practice of agriculture. While the vehicles serviced provide a convenience to farmers, use of these vehicles is not essential to a farm operation. The Land Use Board of Appeals (LUBA) found, in LUBA No. 94-104, that "*while farmers must eat and farm equipment frequently operates on gasoline, that is not sufficient to make grocery stores and gas stations commercial activities in conjunction with farm use. The connection must be closer to the 'essential practice of agriculture.'*" Likewise, while farmers may use automobiles and pickup trucks to perform some activities associated with the farm operation, that is not sufficient to make automobile repair shops commercial activities in conjunction with farm use.

Repair of vehicles used for non-farm purposes can only be allowed as an incidental activity and should not result in generation of more than 25% of the total income of the repair business. Information provided by the applicant regarding the proportion of automobile and pickup truck service compared to farm equipment service provided by the business for the month of May 2016 indicates that 47.6% of the gross income is from repair of non-farm vehicles. Marion County Code Enforcement commented that a visit to the property found that no farm equipment or farm vehicles are being repaired at the subject property. In order to allow the business to continue on the property, repair of non-farm vehicles must be limited to 25% of total income and documentation must be provided to show that this limitation is being observed. The use can be managed to meet the criteria for operating a commercial activity in conjunction with farm use, subject to conditions.

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

- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

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

10. Because a repair business was approved and has operated on the property since 1978, repair of farm vehicles on the property is not expected to have a negative impact on nearby lands devoted to farm use, as long as the conditions of approval are met. CU78-80 required installation of a holding tank to provide for wastewater treatment for the business. A limit of two employees was placed on the business because of the limited capacity of this type of waste treatment improvement. The Oregon Department of Environmental Quality requires a pumping contract for the tank and submission of records showing that the holding tank is maintained in accordance with state and federal regulations. There is no evidence in Marion County records that this has been done since 1978. Evidence must be submitted by the applicant to show that these requirements are being met. The proposal can meet #9(a), subject to conditions. The Silverton Fire District serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b). The property is not within a wildlife habitat area or geologically hazardous area. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air or water quality. Noise generated by the proposed activity should be comparable to agricultural activities. The proposal meets #9(c) and (d). There are no potential water impoundments or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.

11. MCC 17.110.680 states that:

“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 would correct the violation.”

In this case, an active code enforcement case is present on the subject parcels. Approval of this conditional use would resolve the code enforcement currently in progress on the property.

12. Based on the above findings it has been determined that the applicant's request meets all applicable criteria for an vehicle repair business as a commercial activity in conjunction with farm use and is, therefore, **APPROVED**.

Warren Jackson
Planning Director

Date: June 28, 2016

If you have any questions regarding this decision contact Lisa Milliman 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.

BEFORE THE HEARINGS OFFICER

FOR MARION COUNTY, OREGON

OCT 12 1978

In the Matter of the application of Barry L.)
Butler and Esther Utech to operate an allied)
commercial farm activity in an EFU zone on)
property located in the 4100 block of Cascade)
Highway, near Silverton, Oregon.)

CONDITIONAL USE CASE NO. 78-80

NOTICE OF ORDER GRANTING CONDITIONAL USE

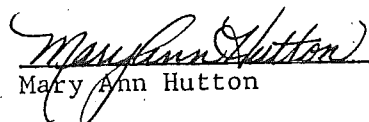
NOTICE IS HEREBY GIVEN to the above-named applicant(s) that the aforesaid application for conditional use is granted subject to any conditions stated in the attached report, by this reference made a part hereof.

THIS CONDITIONAL USE shall not be effective until ten days after the mailing of the notice of decision, and then not in case certification of the proceedings has been requested by the Board of County Commissioners, or an appeal has been taken to the Hearings Officer's decision, in either case the conditional use not being effective until the Board of Commissioners has acted on the certification or appeal.

THIS CONDITIONAL USE shall be effective only when the exercise of the right granted hereunder is commenced within six months from the effective date of the conditional use, unless a longer period is specified or hereafter allowed by the Hearings Officer. In case such right is not exercised, or extension obtained, the conditional use shall be void.

DATED at Salem, Oregon, this 12th day of October, 1978.

MARION COUNTY HEARINGS OFFICER



Mary Ann Hutton

Effective date: October 23, 1978

Expiration date: April 23, 1979

NOTE: PERMITS are required PRIOR to construction, and PRIOR to the installation of septic tanks and drain fields. Please make application to the Marion County Department of Building Inspection. Second Floor, 220 High Street, NE, Salem, Oregon. Telephone: 588-5147

BEFORE THE HEARINGS OFFICER
FOR MARION COUNTY, OREGON

In the matter of the application of Barry L.)
Butler and Esther Utech to operate an allied)
commercial farm activity in an EFU zone on)
property located in the 4100 block of Cascade)
Highway, near Silverton, Oregon.) CONDITIONAL USE CASE NO. 78-80

Date and Place of Hearing: September 27, 1978, in the Board's Hearing Room, Marion
County Courthouse, Salem, Oregon.

Appearances:

Planning Department comments on the application presented by Ray Dwyer.

Proponents: 1. Barry L. Butler appeared in support of his application.

2. Mike J. Klopfenstein appeared in favor of the application.

3. Letters were received from Malcolm B. Higgins and George Babits,
area advisory committee members, in favor of the application.
(Exhibit C, D.)

Opponents: 1. Otto B. Stadeli appeared in opposition to the application.

2. Letters were received from Russel A. and Donna E. Nelson and
David M. Hodges in opposition to the application. (Exhibits E, F.)

Other: A response was received from the Department of Public Works with
comments on the application. (Exhibit G.)

DISCUSSION AND FINDINGS

This is an application to operate a commercial activity that is in conjunction with
farm use in an EFU (Exclusive Farm Use) zone on property located in the 4100 block of
Cascade Highway, on the northwest corner of the intersection of Cascade Highway and
Selah Springs Road, near Silverton, Oregon.

Section 136.230(b) of the Marion County Zone Code permits "commercial activities
that are in conjunction with farm use" in the Exclusive Farm Use zone as a conditional
use. The criteria of the Marion County Conditional Use Policy apply to this application.

The co-applicant Barry L. Butler seeks to establish a repair shop for farm equip-
ment and machinery on the subject property. The property is 100 by 400 feet located at
the intersection of two county roads. One of the roads, Cascade Highway, upon which the
property has the 100 feet of frontage, is an arterial. The property was purchased in
1938 by co-applicant Esther Utech and has apparently not been cultivated at least since that
time. The adjoining landowner is apparently not interested in purchasing the property
to combine with his own. The subject property has reportedly been denied subsurface
sewage disposal approval for a dwelling. The beneficial uses of the parcel would appear
to be quite limited.

The area of the subject property is predominantly in active farm use. A nursery
is directly opposite to the south and orchard to the east. Several farm structures,
similar to that proposed here, are located in the area.

Mr. Butler has previously provided the proposed service to area farmers from a site closer to Silverton which is no longer available to him. A need for his services in the area was expressed and this is apparently what prompted the subject property being made available to him to continue the service.

Mr. Butler proposes to construct a 40 by 50 foot pole building set back 100 feet from the center of Cascade Highway. He intends to have two "bays" and will operate the business alone or occasionally with one employee. He intends to maintain and repair farm tractors, trucks and equipment. He does not intend to include the repair of automobiles or the separate sale of any equipment or products, aside from that customarily installed in the normal course of such repair and servicing work (such as oil, replacement parts, etc.)

There apparently is sufficient room on the property to provide access from either or both County roads and for off-street loading, turning, and parking. Sewage disposal for the use is proposed by chemical toilet or holding tank.

Mr. Butler states the nearest similar service in the area is either in the center of the City of Silverton or 15 to 20 miles away. He states the majority of his customers from this side of town come from within 10 miles. The central location of the property in the rural area, its size, limited use and price are factors cited by the applicant as making the property better suited for the use than similar properties which he has found are of limited availability, not as favorably located to serve the needs of the farming community, and priced prohibitively for the intended use.

The area of the subject property is designated Primary Agricultural in the Marion County Comprehensive Plan, an area set aside primarily for agricultural uses and in which the predominant zoning is prescribed to be for Exclusive Farm Use. (Comprehensive Plan, at 80, 81.) The property appears to be properly zoned in light of the Comprehensive Plan designation. The purpose and intent of the Exclusive Farm Use zone is to provide areas for the continued practice of agriculture and permit the establishment of only those new uses which are compatible to agricultural activities so as to guarantee the preservation and maintenance of the areas so classified for farm use free from conflicting non-farm uses and influences. (Marion County Zone Code Section 136.210.)

FINDINGS OF FACT

1. The proposed use is permitted in the Exclusive Farm Use zone in which the subject property is located as a conditional use.

2. The proposed use, while commercial in nature, appears to provide a needed service to the surrounding farming community. Provided the use granted is conditioned and limited to that applied for and reviewed, the proposed use appears to be compatible with and supportive of other uses in the area.

3. The subject property has potential access onto two County roads, one of which, Cascade Highway, is an arterial. Slow moving vehicles turning directly onto or off of the arterial to the property may create an avoidable traffic impediment on Cascade Highway and at the intersection. Provided access is located on Selah Springs Road only, away from the intersection with Cascade Highway, and that sufficient area is provided for off-street loading, turning and parking, the proposed use would not appear to have a materially detrimental effect on traffic movement in the area.

4. The location of the use close to the farming community it is intended to serve, its location in relation to County roads in the area, and the size and limited value of the subject property for any other beneficial uses indicate the specific location proposed for the use best satisfies the public need recognized in the Zone Code for such allied farm commercial uses.

5. An approved means of sewage disposal is necessary to be provided on the subject property. Urban services are not available to the subject property but are not necessary to the proposed use.

6. The Marion County Comprehensive Plan designates the area of the subject property for Primary Agricultural uses. The proposed use at this location appears to serve the purpose of this designation in providing a needed service for the continuation of agricultural activity in the area.

BASED ON THE FOREGOING, THE HEARINGS OFFICER ENTERS THE FOLLOWING:

CONCLUSIONS AND DECISION

The Hearings Officer is empowered by the Ordinance to grant the conditional use in this case. The application, as proposed and conditional below, is in harmony with the purpose and intent of the Exclusive Farm Use zone and is consistent with the criteria of the Marion County Conditional Use Policy.

The Conditional Use is GRANTED, subject to the following conditions:

1. That the conditional use is granted only for the servicing of farm related equipment and vehicles. It does not include the commercial servicing, repair or maintenance of automobiles. It does not include separate sales of any equipment or products aside from that customarily installed in the normal course of the service operation.

2. That all service work be confined to the approximate 40 by 50 foot building proposed.


3. That no more than two full time equivalent workers be employed in the business at any one time.

4. That access to the property be provided on Selah Springs Road only, away from its intersection with Cascade Highway. That adequate area be provided on the premises for off-street loading, turning, and parking to serve the use.

5. That approval for an acceptable means of sewage disposal to serve the use be obtained from the Department of Building Inspection prior to the issuance of building permits. That all required building permits be obtained from the Department of Building Inspection.

Dated this 12th day of October, 1978.

MARION COUNTY HEARINGS OFFICER



Mary Ann Hutton