

THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. CU 17-039
)
Application of:) Clerk's File No.
)
WILLIAM & ALLISON HAMLIN AND) **Conditional Use**
ROBERT & DAWN ALDRIDGE)

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of William and Allison Hamlin and Robert and Dawn Aldridge for a conditional use to establish a meadery as a commercial activity in conjunction with farm use on an 7.62-acre parcel in an EFU (EXCLUSIVE FARM USE) zone at 12433 Silverton Road NE, Silverton, Marion County, Oregon (T6S, R1W, S33D, tax lot 800).

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 17.119 and 17.136.

III. Public Hearing

A public hearing was held on this matter on December 13, 2017. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- | | | |
|----|-----------------|-------------------|
| 1. | Brandon Reich | Planning Division |
| 2. | Robert Aldridge | Applicant |
| 3. | Mike Long | Proponent |

No objections were raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at hearing. No documents were entered into the record as exhibits.

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 MCCP and zoned EFU. The purpose of the designation zoning is to promote and protect commercial agricultural operations.
2. The property is on the north side of Silverton Road NE (State Highway 213) in the 12,400 block. The property contains a dwelling, accessory building, well and septic system. The property was described by deed (Volume 599,

Page 543) in April 1965 and is considered a legally created parcel for land use purposes.

3. According to the *Soil Survey for Marion County Area Oregon*, the subject property is made up of 100% high-value farm soils.
4. Surrounding properties are mostly zoned EFU, with some I (Industrial) and C (Commercial) zoned property to the south across Silverton Road.
5. Applicants propose operating a commercial activity in conjunction with farm use on the subject property to produce mainly honey-based mead and some fruit-based cider, with additional uses discussed below.
6. The Marion County Planning Division requested comments on the application from various governmental agencies.

Marion County DPW Land Development and Engineering Permits Section (LDEP) commented:

ENGINEERING CONDITIONS

Public Works Engineering Permits requests that the following conditions lettered A through C, are included in the approval of land use case.

Condition A - *Prior to issuance of building permits associated with the proposed business, submit an engineered civil site plan to MCPW Engineering for review and approval that addresses grading, stormwater management, access, traffic circulation and parking.*

Condition B - *Prior to issuance of building permits associated with the proposed business, obtain an Access Permit, and under the Permit, widen and pave a 20-24 wide x 30 foot deep driveway connection to the public road with hot mix asphalt.*

Access work, which is typically given as an Engineering Requirement, is being elevated to Condition status relative to its timing for completion.

Condition C - *Prior to issuance of building permits, dedicate a 50-foot public right-of-way half-width along the subject property Silverton Road frontage to meet the standard for a County Arterial road.*

R/W dedication requirements for conditional uses are in general accordance with Marion County Code (MCC) 17.119.060. The nexus for this Condition is the addition of commercial traffic to the site, and the need to allocate width for future road improvements and utilities.

ENGINEERING REQUIREMENTS

The following comments lettered D through F, are informational only, regarding Public Works Engineering requirements and issues that the Applicants will need to address if the proposal is approved.

D. In accordance with Marion County Driveway Ordinance 651, driveways must meet sight distance, design, spacing, and safety standards. The following sub-requirements, numbered 1 through 4, pertain to access.

- 1) The proposed business will use the existing access.
- 2) No secondary access to Silverton Road will be allowed.
- 3) Widen and pave the existing access prior issuance of building permit, per MCPW Engineering Condition B.
- 4) Any driveway gate must be set back a minimum of 25 feet from the public road.

E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon establishment of the change in-use-application and/or application for building permits per Marion County Ordinance #00-10R. The land use application states intent to construct a 20,000 square foot facility.

F. Signs are not allowed in the public right-of-way. Furthermore, signs may not impede on driveway Intersection Sight Distance.

Marion County Building Inspection commented that septic permits may be required.

Silverton Fire District commented that the proposed up to 20,000 sq ft. barn-like structure posed fire and life safety concerns:

- Access is required to and around the structure?
- Is there a water supply to such a large structure or will it be sprinklered?
- What type of construction is the structure and is [it] an approved type based on the next question?
- Occupancy of the structure (Is it going to be an F-1 or F-2) due to the type of product being produced?
- Will it also be a place for public to drink (then does occupancy change or is there an occupancy separation from the F occupancy)?

Until a thorough review is done by the building official the Fire District cannot give exact requirements as most of our requirements are based on occupancy classification etc..

Marion County Tax Office provided tax information on the subject property.

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

V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 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 have not met their burden and the application must be denied. If the evidence for every criterion is a hair or breath in applicants' favor, the burden of proof is met and the application approved.

2. Under MCC 17.119.100, the Planning Director has the power to decide applications for conditional uses. The Planning Director decided this matter on October 30, 2017. 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 was mailed October 30, 2017. Applicants are interested persons and appealed the Planning Director's decision on November 14, 2017. The appeal was timely filed. Under MCC 17.119.150, on appeal of the Planning Director's decision, the hearings officer shall conduct a *de novo* public hearing on the decision. The hearings officer may hear and decide this matter.
3. 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 bargain and sale deed recorded in county records at reel 3681, page 89 shows William and Allison Hamlin and Robert and Dawn Aldridge own the subject property. The application was filed by appropriate persons. MCC 17.119.020 is satisfied.
4. Under MCC 17.119.025 a conditional use application shall include signatures of certain people, including all owners of the subject property. William and Allison Hamlin and Robert and Dawn Aldridge own the subject property and all signed the application. MCC 17.119.025 is satisfied.
5. 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.

6. Under MCC 17.119.030, the hearings officer may hear and decide only those applications for conditional uses listed in MCC title 17. In the conditional use application form "request" section, applicants state:

"Open a mead producer 'meadery' (MCC 17.125.030)"

MCC 17.125.030 contains regulations related to wineries. Winery is not defined in the M CCP, MCC or state land use statutes and rules, but state laws specific to wineries that underlie MCC 17.125.030, are specific to grape processing. A meadery does not involve processing grapes; it involves processing honey. Applicants acknowledge in their application narrative that they will not be using grapes. MCC 17.125.030 does not apply, but wineries may be allowed as commercial activities in conjunction with farm use. See, *Friends of Yamhill County v. Yamhill County*, 255 Or App 636 (2013). MCC 17.136.050(D)(2) lists commercial activities in conjunction with farm use, subject to MCC 17.136.060(D), as a conditional use in the EFU zone. A meadery involves processing honey rather than grapes but similarly, it processes raw farm products into value added end products. A meadery might also be established as a commercial activity in conjunction with farm use if all applicable criteria are met. The hearings officer may hear and decide this matter. MCC 17.119.070(A) is met.

7. 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.

The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

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 17.136 and related criteria are met, the proposed use will be in harmony with the purpose and intent of the zone. The criteria are discussed below and, as conditioned, are met. MCC 17.119.070(B) is met.

8. Conditions imposed below on the approved application are necessary to protect the public health safety and welfare or for the protection of property or improvements in the neighborhood. As conditioned, MCC 17.119.070(C) is met.

MCC 17.136.060(A)

9. Under MCC 17.136.060(A), the following criteria apply to all conditional uses in the EFU zone:
 1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels

upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

2. Adequate fire protection and other rural services are or will be available when the use is established.
 3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
 4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
 5. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.
10. The Planning Director approved honey and fruit processing into mead and cider along with mead and cider tasting and tasting events, mead and cider sales, and incidental sales (less than 25% of total sales) of other items directly related to mead or cider, such as product grown on the property, serving glasses, and mead or cider from product not grown on the property. The Planning Director did not approve or allow a limited service restaurant or events, such as weddings and receptions. Applicants appealed the condition disallowing weddings, receptions and other events, and asked for up to 18 agritourism events. Applicants stated that the revenue from additional events is needed to make the mead and cider operations successful.

Applicants did not request additional uses until the appeal, and then asked for "up to 18 agritourism events per year, including 'celebratory events' such as weddings." Original notice to agencies did not include 18 additional events nor did the hearing notice to surrounding property owners. ORS 197.763(3)(a) requires that hearing notices explain the "proposed use or uses which could be authorized." Agency comment and public hearing notices simply state this is an application "for a conditional use to establish a meadery as a commercial activity in conjunction with farm use.." In *Bigley v. City of Portland*, 168 Or App 508 (2000), the City of Portland approved an application to amend the (then) Washington Park Zoo Master Plan. The city's hearing notice listed 23 proposed projects and improvements but not conversion of a 129-space temporary parking lot to a permanent parking lot. Petitioners appealed the decision to the Land Use Board of Appeals (LUBA) outside of normal time limits based on inadequacy of the notice, and after LUBA rejected that argument, appealed to the Oregon Court of Appeals. The court of appeals found that, "[t]o comply with ORS 197.763(3)(a), the notice here was required to describe the proposed conversion of the parking lot from temporary to permanent..There is simply no way that a notice that made no mention of the proposed action concerning

the parking lot...can be said to have 'reasonably described' the 'final action' affecting the parking lot."

A "meadery" may not be a commonly heard term, but neighbors and agencies might reasonably assume it would entail processing honey into the beverage, mead, and would involve on-site tasting and sales, but not 18 undefined agritourism events that could include weddings, receptions and other unknown events. Lack of information on what proposed events might entail makes it difficult to impossible for agencies, the public and decision makers to evaluate potential impact from added events. Applicants do not provide information on how many people may come to the site (30, 300, more?), whether there will be live bands or a public address system, what parking and loading requirements are needed, whether paving will be required and how it would impact runoff, whether the site can feasibly accommodate on-site wastewater generated by the uses, whether additional fire and life safety requirements can be met and so on.

Rather than deny the application out right because of the additionally requested events, the hearings officer will consider the application originally requested, a proposal for a meadery.

11. *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.

At hearing, applicants identified farm uses on surrounding lands devoted to farm or forest use roughly in the farm zone notification area, the presumed sphere of influence for uses in the zone. The notification area contains no identified or apparent forested areas or forest operations. Forest practices are not examined. A large agricultural field within the notification area to the south is well insulated from the subject property by over 120' of railroad and Highway 213 right-of-way and 300 to 400 feet of industrial, commercial and other intervening nonfarm uses. The proposed use will have little to no impacts on farm uses to the south. Remaining EFU zoned properties within the notification area are all north of Highway 213, and appear to contain dwellings. These properties are mostly in grass seed. Neighbor Mike Long raises grass seed on his property and testified to grass seed farm practices such as seeding, ground spraying (sprayer tank hooked up to a tractor) and harvesting, but no field burning. Mr. Long saw no opportunity for the proposed use to interfere with farm practices. Given the nature of the surrounding area, it is more likely than not that the meadery use will not impinge on farm practices in the area. MCC 17.136.060(A) (1) is satisfied.

12. *Adequate services.* Utility lines are available on the subject property. The subject property is not within a Sensitive Groundwater Overlay (SGO) zone and the well on the property produces 30 gallons per minute (gpm). Mr. Aldridge stated not much water is used in the process and the well will be adequate. Since little water is used in the processing operation, little waste water will be produced from the actual mead production. Additional water will be required for the tasting room and tasting events. More and larger activities would generate more wastewater. Applicants intend to put in a new septic system and there are wet conditions on the property that might interfere with septic systems. But, with reasonable limitations and a condition of approval requiring septic approvals, it is more likely than not that waste water can feasibly be accommodated on-site.

The subject property fronts Silverton Road (State Highway 213), an MCCP MCRSTP identified arterial road. Applicants have not submitted a traffic impact analysis (TIA) or other documentation regarding traffic generated by the proposed use or its various parts, such as truck trips to and from the site or car trips expected in conjunction with normal use and other events, but Marion County PW requested additional right-of-way to accommodate future road improvements and utilities. Applicants agree to proposed PW conditions. As limited and conditioned, transportation facilities will be adequate.

Silverton Fire District raised concerns about the size of the proposed structure and the type of occupancy for the related tasting room. Other events also raise questions about fire and life safety requirements. As a condition of approval of the meadery, applicants must provide the Planning Division with fire department approval of applicants' site plan prior to building permit approval.

With the noted conditions, adequate services will be provided. As conditioned, MCC 17.136.060(A)(2) will be satisfied.

13. *Significant adverse impact.* The property is not in an SGO zone or state groundwater limited area. The site is not in a geologic hazard or floodplain overlay zone. No MCCP-identified major or peripheral big game habitat or watershed areas are on or near the subject property. An approved on-site wastewater disposal system will protect water quality and soil and slope stability. With a condition requiring septic system approval, MCC 136.060(A)(3) will be satisfied.
14. *Noise.* Honey and fruit processing and tasting room activities will take place inside. The proposed facility would be centered on the subject property, providing a fairly significant setback from other properties. Applicants point out that Silverton Road is a busy roadway and significant noise source in the area. Applicants do not address whether additional events would take place solely or would also be conducted outside. Outside events with a band or public address system have the potential to disturb uses allowed on surrounding properties. Outside tasting events with

amplified sound will not be allowed. With this condition of approval, MCC 17.136.060(A) (4) will be satisfied.

15. *Water impounds/mineral and aggregate sites.* No MCCP identified mineral and aggregate sites or potential water impounds are on or near the subject property. MCC 17.136.060(A) (5) is satisfied.

MCC 17.136.060(D)

16. Under MCC 17.136.060(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.
17. *Primarily a customer or supplier of farm uses.* Applicants propose a mead production facility. Mead is a fermented honey product. Mead production is the key activity because it is the one that is a direct customer of beekeepers and fruit growers. Mead production must be established and maintained, and cannot become secondary to other proposed uses. With a condition of approval prohibiting non-mead/cider tasting events, MCC 17.136.060(D) (1) will be satisfied.
18. *Enhance farming enterprises in local agricultural community.* The proposed mead production facility will enhance local bee keeping and fruit growing operations by providing a local processing facility and market for honey and fruit. The processing facility meets MCC 17.136.060(D) (2) requirements.
19. *Occur together in the local community.* Applicants will use only Oregon sourced honey and fruit for processing. The agricultural and commercial activities will occur together in the local community. MCC 17.136.060(D) (3) is satisfied.
20. *Products and services essential to the practice of agriculture.* Value added processing is essential to marketing of and value in honey and fruit production, significant agricultural uses in Oregon. MCC 17.136.060(D) (4) is satisfied.

VI. Order

It is hereby found that applicants have met the burden of proving applicable standards and criteria for approval of a conditional use application for a meadery and associated tasting room and tasting activities as a commercial activity in conjunction with farm use have been met. Therefore, the conditional use application is **GRANTED**, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

1. Prior to any use of the property for mead or cider production, sales or tasting events, applicants shall obtain all permits, including subsurface sewage disposal, required by Marion County Building Inspection Division.
2. Prior to or in conjunction with issuance of any building permits, applicants shall provide a detailed site plan demonstrating compliance with MCC chapter 17.118 parking and loading requirements.
3. Customer mead or cider tasting and tasting events are permitted indoors on the property.
4. Sale of mead or cider produced on-site is permitted.
5. Incidental sales (less than 25% of total sales) of other items directly related to mead or cider, such as sale of serving glasses, are permitted.
6. No limited service restaurant is approved by this decision.
7. No events, such as weddings and receptions, are permitted by this approval.
8. Applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division, and shall record the statement with the Marion County Clerk after it is reviewed and signed by the Planning Director.
9. Prior to issuance of building permits associated with the proposed business, applicants shall submit an engineered civil site plan to MCPW Engineering for review and approval that addresses grading, stormwater management, access, traffic circulation and parking.
10. Prior to issuance of building permits associated with the proposed business, applicants shall obtain an access permit, and under the permit, will widen and pave a 20-24 wide x 30 foot deep driveway connection to the public road with hot mix asphalt.
11. Prior to issuance of building permits, applicants shall dedicate a 50-foot public right-of-way half-width along the subject property Silverton Road frontage to meet the standard for a county arterial road.
12. Any sign placed on the property shall meet MCC chapter 17.191 standards.

13. Applicants shall contact the Marion County Health Department or the Oregon Department of Agriculture and obtain any permits or licenses required to operate the processing facility.
14. Applicants shall contact the Oregon Health Authority and obtain any permits or licenses required for use of the well for the business.
15. Applicants shall provide the Marion County Planning Division with proof that the Silverton Fire Department has approved applicants' site access and premise identification plans.
16. Failure to continuously comply with conditions of approval may result in this approval being revoked. Any revocation may be appealed to the Marion County Hearings Officer for a public hearing.

VII. Other Permits

Applicants herein are advised that the use of the property proposed in this application may require additional permits from other local, state or federal agencies. The Marion County land use review and approval process does not take the place of, or relieve the applicants of responsibility for, acquiring such other permits, or satisfy any restrictions or conditions thereon. The land use permit approved herein does not remove, alter or impair in any way any covenants or restrictions imposed on this property by deed or other instrument.

VIII. Effective Date

The application approved herein shall become effective on the 15 day of March 2018, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this order. In case of Board review, this order shall be stayed and shall be subject to such final action as is taken by the Board.

IX. 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 14 day of March 2018. 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 27 day of February 2018.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Robert & Dawn Aldridge
12433 Silverton Rd.
Silverton, OR 97381

William & Allison Hamlin
12433 Silverton Rd.
Silverton, OR 97381

Mike Long
12653 Silverton Rd.
Silverton, OR 97381

Terry Glenn
Silver Spur RV Park, LLC
P.O. Box 493
Silverton, OR 97381

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

Agencies Notified
Planning Division
(via email: gfennimore@co.marion.or.us)
(via email: breich@co.marion.or.us)
(via email: lmilliman@co.marion.or.us)
Public Works Engineering
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Tax Collector
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Dawn Olson
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Silverton, OR 97381

James Sinn
3168 Cascade Hwy. NE
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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 27 day of February 2018, and that the postage thereon was prepaid.



Christi Klug
Secretary to Hearings Officer