



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

September 20th, 2023

Meeting date:

Public Works

Department:

Title

Receive Hearings Officer decision on Administrative Review Case 23-007/Ivanov

Agenda Planning Date: 9/7/2023 Management Update/Work Session Date: None Audio/Visual aids

Time Required 0 min Contact: Austin Barnes Phone: 503-566-4174

Requested Action:

Receive Hearings Officer decision on Administrative Review Case 23-007/Ivanov.

Issue, Description & Background:

The Marion County Hearings Officer issued a decision on September 8th, 2023 denying AR23-007. As part of the land use process the Marion County Board of Commissioners must officially receive notice of the decision.

Financial Impacts:

None

Impacts to Department & External Agencies:

None

List of attachments:

Hearings Officer Decision

Presenter:

Austin Barnes

Department Head Signature: For Brandon Resch

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. AR 23-007
)
FREDOSIY AND FIONYA IVANOV) **ADMINISTRATIVE REVIEW**

ORDER

I. Nature of the Application

The matter before the Hearings Officer is the Application of Fredosiy and Fionya Ivanov for an administrative review to place a primary farm dwelling on a 17.50 acre parcel in EFU (Exclusive Farm Use Zone) located in the 17800 block of Boones Ferry Road NE (T4S, R1W; Section 32D, Tax Lot 1300).

II. Relevant Criteria

The standards and criteria relevant to this application are found in Oregon Revised Statutes Chapters 537 and 540, particularly ORS 537.535(1)-(2), ORS 540.045(1)(a) and Marion County Code Title 17, particularly MCC 17.136.030(A)(1) and MCC 17.110.380. Applicants also assert ORS 197.307(4) as relevant to the application.

III. Hearing

A public hearing was held on the application on July 20, 2022. At the hearing, the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- | | | |
|----|----------------|---------------------------------|
| 1. | Austin Barnes | Marion County Planning Division |
| 2. | James Howsley | Attorney for Applicants |
| 3. | Merle Stutzman | Opponent |

No objections were raised at notice, jurisdiction, conflict of interest, exhibits, evidence or testimony presented at the hearing. The record was left open to allow additional submissions from the parties. The first submissions were to be submitted by July 28, 2023, the second submissions/responses were to be submitted by August 4, 2023, and the final submissions were to be submitted by August 11, 2023.

The following materials were received during the open record period:

On July 28, 2023, Applicant submitted:

1. Affidavit of Fedosiy Ivanov regarding water meter and material burning, with supporting exhibits.
2. Partial transcript of July 20, 2023 Land Use Hearing on AR 23-007.
3. Oregon Water Resources Department Water Rights Information Query for Permit G-19001.

IV. Executive Summary

Fredosiy and Fionya Ivanov applied for an administrative review to place a primary farm dwelling on a 17.50 acre parcel in EFU (Exclusive Farm Use Zone) located in the 17800 block of Boones Ferry Road NE (T4S, R1W; Section 32D, Tax Lot 1300). Although the application meets the criteria outlined in the Marion County Code for the establishment of a primary farm dwelling under MCC 17.136.030(A)(1), the Applicants were able to meet the criteria by producing farm income by the unlawful use or appropriation of water rights. MCC 17.110.680 precludes issuance of a permit for the use of land or structures or for the alteration or construction of any structure and no land use approval granted if the land for which the permit or approval is sought is being used in violation of local, state, or federal law or is being used in violation of the provisions of this title. The testimony and record support an objectively reasonable finding that the gross annual income (at least \$80,000) from the sale of farm products (strawberries) was produced by the unlawful appropriation and storage of ground water. The Applicants' violation of state law in appropriating water without water rights resulted in Applicants' ability to meet the criteria for placement of a primary farm dwelling on the subject tract. The Administrative Review Application is DENIED based upon MCC 17.110.680.

V. Findings of Fact

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned Exclusive Farm Use (EFU). 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).
2. The subject property is located on the eastern side of Boones Ferry Rd NE, approximately 0.52 miles south of its intersection with Broadacres Rd NE. The property contains an agriculture building, related driveway improvements and strawberry fields, the parcel is otherwise vacant. The parcel was involved in Lot Line Adjustment LLA84-006 which created its current configuration. The parcel is legal for land use purposes.
3. Surrounding uses are farm uses in all directions. All adjacent lands are zoned EFU and are planted with various varieties of row crops, there are also large nurseries to the south and west of the parcel.
4. The Applicants propose to locate a primary farm dwelling on the property in which the owner/farm operator intends to reside.
5. The Planning Division sought comments from various governmental agencies. The following comments were received:

Marion County Septic commented that a septic authorization is required for the dwelling.

Marion County Building commented that permits are required for the new dwelling.

Marion County Sheriff's Office Code Enforcement indicated no objection to a house but noted that there is an open case regarding the subject property regarding people possibly living in the agricultural building on the subject property.

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

6. The planning file includes a letter from the Water Resources Department dated June 9, 2023 to Fedosiy and Fionya Ivanov finding noncompliance with the requirement to install a measuring device at the point of appropriation from MARI 68707. The correspondence includes a statement that ORS 537.777 and 537.780, as well as OAR 690-215-0080 and ORS 690-250-0060 provide the authority for the Water Resources Department to require a measuring device. The letter further prohibits the appropriation of water until an approved, workable measuring device is installed on MARI 68707.
7. The planning file includes the Proposed Action of the State of Oregon Water Resources Department as an Amended Notice of Assessment of Civil Penalties and Damages and Opportunity for a Hearing for Unlawful Appropriation and Storage of Ground Water, including Well Construction and Operation. The Notice states that on September 4, 2020, a Notice of Violation was issued to the Applicant that indicated that the Applicant was in violation of ORS 537.535(1) and (2), specifically for the unlawful appropriation and storage of ground water. The September 4, 2020 Notice of Violation is also included in the planning file.
8. The planning file includes correspondence from Brent DeArmond. Mr. DeArmond's correspondence states that his family has farmed in the Willamette Valley for many generations. Mr. DeArmond notes his frustration with the Applicants circumventing the system. Mr. DeArmond also states that he was interested in purchasing the subject property prior to Applicants' purchase. Mr. DeArmond cites the lack of water rights on the property as the reason he did not purchase the property.
9. On May 15, 2023, Julie Byrd emailed Marion County Sheriff's Office Code Enforcement regarding Applicants residing in the ag building on the property at 17750 Boones Ferry Road NE, Hubbard, Oregon.
10. The planning file contains correspondence to Code Enforcement, Water Recourses, and Marion County Building Department from Paul Bizon. The correspondence notes that in 2019, Eric Bizon and Merle Stutzman contacted Oregon Water Resources Department with concerns of illegal irrigation by Mr. Ivanov. The correspondence indicates that Mr. Bizon and Mr. Stutzman provided pictures with dates and times when they observed irrigation that they believed to be illegal for the three prior years. The correspondence further states that in 2021 and 2022, Mr. Ivanov began using a water traveler irrigation system despite the fact there were no agricultural water rights for the project. The correspondence expresses frustration about the Applicants' ability to claim farm income from minimal acreage with no water rights.
11. On July 8, 2023, Merle Stutzman submitted comments to the record. Mr. Stutzman's comments reference the claimed unlawful use of ground water and claim that as of May

22, 2023, there is an occupied dwelling on the subject property that is covered by a large agricultural building. Mr. Stutzman notes that for the last three years, Applicants have irrigated the subject property “with disregard for regulations.”

12. On July 17, 2023, Julie Byrd submitted a statement in opposition to the application. Ms. Byrd states that the subject property is land zoned as EFU without water rights, and that after purchasing the property, the Applicants began growing strawberries and irrigating them without water rights to establish the farm income needed for placement of a primary farm dwelling. Ms. Byrd provided photographs of irrigation on the subject property from 2019-2023.
13. At the hearing, Austin Barnes presented the Staff Report on behalf of Marion County Planning. Mr. Barnes testified that although the application appears to meet the criteria to allow the Applicant to place a primary farm dwelling on the property, Staff received information from the Oregon Water Resources Department (OWRD) of a notice of violation of ORS 537.535 (1) and (2) regarding the unlawful use or appropriation of groundwater on the subject property.
14. James Howsley, Attorney, appeared on behalf of the Applicants. Mr. Howsley stated that the Staff Decision correctly acknowledges that the Application satisfies the criteria to establish a primary farm dwelling based on farm income and that the analysis should have ended at that point. Mr. Howsley posits that the Planning Division overstepped its boundaries in reviewing the water rights issue and imposing a standard of compliance with state and local rules in reliance on MCC 17.110.690. Mr. Howsley further argues on behalf of the Applicants that the imposition of compliance standards as stated in the Marion County Code is not clear and objective. Mr. Howsley stated that Staff’s inquiry should have been complete upon a determination that the criteria for placement of a primary farm dwelling are met, and that Staff should not consider the continuation of farm income and future feasibility of farming because water rights can be obtained. Mr. Howsley argues that there are no criteria that require proof of continuing farm operations in permitting a farm dwelling. Mr. Howsley cited ORS 197.307 (Needed Housing Policy) and argues that denial of the application based on MCC 17.110.680 violates ORS 197.307(4) because standards, conditions and procedures regulating the development of housing that are not clear and objective. Mr. Howsley indicated that the Applicants are obtaining water rights for the subject property.
15. Merle Stutzman testified at the hearing. Mr. Stutzman owns property adjacent to the subject property and sought information about water rights for the properties. Mr. Stutzman stated that once the subject property was acquired by the Applicants, although there were no water rights, he watched the property being farmed. Mr. Stutzman applied for water rights for his property in June 2020, and was granted limited water rights in 2021. Mr. Stutzman stated that as long as the law exists, it should be equally enforced.
16. Planner Austin Barnes advised that Planning has received information that the agricultural building on the property is being used as a residence and that Applicants are residing on the property. MCC 17.110680 also allows the denial of an application if there is any false or misleading information. Information submitted to Planning by Ms. Byrd, Mr. Stutzman, and Mr. Bizon indicates that the Applicants are currently living in the

agricultural building. Mr. Bizon stated that Marion County Code Enforcement also indicated that the Applicants were residing in the agricultural building on the subject property. False or misleading information indicating that there is no other dwelling on the property (if in fact, there is a dwelling on the subject property) provides an alternate basis for denial of the application.

VI. Additional Finding of Fact and Conclusions of Law

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

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

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is in Applicant’s favor, then the burden of proof is met and the application must be approved.

2. Applicants seek administrative review approval to place a primary farm dwelling in an Exclusive Farm Use (EFU) zone.
3. Under MCC 17.110.680, the Planning director determines all matters pertaining to administrative matters as prescribed by this title.
4. Under MCC 17.115.110(C), the Applicant or any person aggrieved by the decision may file a request for hearing to the planning division within 15 days of the date the decision was issued. The Planning Director’s decision was mailed on May 22, 2023. Applicants appealed the Planning Director’s decision on June 6, 2023, within the 15-day time limit. MCC 17.115.110(C) is met.
5. Under MCC 17.115.110(F), on a request for a hearing, the hearings officer shall hold a hearing on the matter in accordance with MCC Chapter 17.111. The hearings officer may hear and decide this matter.
6. Under MCC 17.115.110, administrative reviews are subject to MCC 17.119.020 and MCC 17.119.025.
7. Under MCC 17.119.020, an application may be filed by the owner of the property that is the subject of the application. Fredosiy and Fionya Ivanov are owners of the subject

property as evidenced by the Bargain and Sale Deed recorded on May 27, 2020 at Reel 4338, Page 24. MCC 17.119.020 is met.

8. Under MCC 17.119.025, an application shall include the signatures of all owners of the subject property. Fredosiy and Fionya Ivanov signed the Administrative Review Application. MCC 17.119.025 is met.
9. Primary Farm Dwelling. Primary Farm Dwellings in the EFU zone may be permitted through MCC 17.136.030 (A). The options depend on whether the dwelling will be located on high-value farmland, or if it will be built in conjunction with a commercial dairy farm, or other otherwise. In this case, the applicant seeks to qualify for a primary farm dwelling through MCC 17.136.030 (A) (1).

MCC 17.136.030 (A) (1) provides:

A. Primary Farm Dwellings. A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

- 1. It is located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:*

The subject property is comprised of 97.3% high value soils, namely Woodburn, Amity and Dayton silt loams. This criteria is met.

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

This is the only parcel owned by the Applicants in the county and constitutes their entire farm operation. The Applicants state that "Property has an existing ag building." There is no lawful dwelling on the property. The criterion is met preliminarily, or could be with approval of the Application.

Comments submitted to the record indicate that Applicants are, in fact, residing in the agricultural building sited on the subject property, which, if established, could cause reconsideration and revocation of any approval. If the Applicants were living in an agriculturally exempt structure on the property, approval of the Application would remedy the violation.

The director or the hearings officer may deny any land use application if it is determined that the application includes any false or misleading information. Although the Application indicates that the property has an existing ag building, it does not specifically state that there is "no dwelling on the subject farm operation." The submissions by Ms. Byrd, Mr. Stutzman, and Mr. Bizon tend to indicate that the Application contains misleading information. The Application states that there is an ag building which implies

there is no dwelling, but the submissions support a finding that the Applicants are residing on the subject property. However, because approval of the application would correct this violation, the inclusion of misleading information is not the basis for denial of the application.

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

The applicants have submitted a copy of their schedule F tax filings. These documents indicate that the farm operation earned a gross income of \$93,863 in 2021 and a gross income of \$82,141 in 2022. both from the sale of strawberries grown on the subject property. A review of aerial imagery and a site visit indicate that the subject property is planted with strawberries, a farm product. The criterion is met on its face. However, as detailed below, it is determined that this criterion was met by the sale of strawberries (farm products) grown in violation of the Oregon Revised Statutes and Oregon Administrative Rules.

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

As stated above, the subject property is planted with strawberries. This has been confirmed by site visit and a review of aerial imagery. The criterion is met.

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

Fedosiy and Fionya Ivanov are the Applicants and owners of the property and propose to live in the dwelling themselves. Fedosiy Ivanov is also the farm operator and earned the income used in this application. The criterion is met.

10. Based upon the Application and supporting documentation, Applicants initially satisfy MCC 17.136.030(A)(1) to establish a primary farm dwelling on the subject property. Counsel for Applicants argues that compliance with applicable criteria is met and the inquiry is satisfied. Applicants argue that the Director's denial is not warranted because it is based on a subjective decision about the application of water laws.
11. While this application meets the criteria outlined in the Marion County Code for the establishment of a primary farm dwelling, Staff received information from OWRD (Oregon Water Resources Department) that provided notice of violation of Oregon Revised Statutes (ORS) 537.535 (1) and (2), unlawful use or appropriation of groundwater on the subject property. ORS 540.045(1)(a) authorizes the Water Master to regulate the distribution of water among uses in accordance with existing water rights of record. The first notice of violation, dated September 4, 2020, states that the violation is

“the observed appropriation of groundwater from a well (L-131243) for irrigation purposes without the benefit of a water right.”

The notice also states that the property owner has 10 days to correct the violation. The applicant first purchased this property on April 17, 2019 and has been responsible for farming and watering activity since. OWRD has not been able to gain compliance with the applicant in regard to the watering and served a letter to them on May 5, 2023, via hand delivery while on a site inspection with Marion County Code Enforcement. This letter requested that a water measuring device be connected to the well as allowed by ORS 537.777 – 537.780 and Oregon Administrative Rules (OAR) 690-215-0080 and 690-250-0060. This would allow the OWRD to monitor irrigation levels to determine if the watering has stopped. No such device had been installed at the time of the hearing.

Testimony submitted by neighbors indicates that Applicants have been irrigating on the subject property since 2019 to grow their crops. The strawberry crop used to qualify this property for a dwelling using farm income for 2021 and 2022 was grown with water that was unlawfully appropriated in violation of Oregon Revised Statutes and Oregon Administrative Rules.

12. Marion County Code 17.110.680 in part reads:

“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, except federal laws related to marijuana, 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.”

If the applicants were living in an agriculturally exempt structure on the property, approval of the Application would have corrected the violation. The Application, if granted, could correct the violation of an unapproved dwelling (but not alleged violations of state law with respect to water appropriation).

Staff states that if the application were to be approved, the farm operation would be unable to continue without a water right, violating the condition that a primary farm dwelling be occupied by the farm operator. If the farm operation cannot reasonably continue or is not able to be operated in the manner the applicant proposes (high irrigation crops) the county cannot approve such an application.

The Applicant states in his July 26, 2023 Affidavit (submitted post-hearing) that he is considering several options for water supply, including purchasing ground water rights, conversion to crops with less irrigation requirements, or dry farming the property with a spring crop of hay.

The June 9, 2023 letter to Applicants prohibited the appropriation of water until an approved, workable measuring device was installed on MARI 68707. Mr. Ivanov's Affidavit submitted post-hearing also states that he purchased and installed the required water meter in the well house.

Although the criteria does not require a determination that the farm operation can reasonably continue, it is found that the farm operation could continue on the property as indicated by the Affidavit of Mr. Ivanov.

13. Applicants posit that ORS 197.307(4) applies to an analysis of whether the County can deny the primary dwelling based upon MCC 17.110.680. ORS 197.307(4) provides, in relevant part, that a local government may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing. Applicants argue that the County's enforcement of water laws uses standards that are not clear and objective. Applicants argue that denial of the Application based on MCC 17.110.680 is legally incorrect and barred by ORS 197.307(4) by applying standards, conditions and procedures regulating the development of housing that are not clear and objective. Applicants refer to *Legacy Development Group v. City of The Dalles*, (Or LUBA 2021) in support of its position.
14. It is unclear whether placement of a primary farm dwelling on EFU zone land is considered the development of "needed housing." Because in 2017, the legislature extended the "clear and objective requirement to development of all housing, it is assumed *arguendo* for the purpose of this Application that ORS 197.307 is applicable to a determination of whether the primary dwelling can be denied based upon MCC 17.110.680. The subsequent inquiry is whether MCC 17.110.680 provides clear and objective standards with respect to the development of housing with respect to this Application.
15. The purpose and intent of the Marion County Rural Zoning Code includes regulation of the development and use of lands in Marion County outside acknowledged urban growth boundaries and the conservation of farmland for the production of crops. MCC 17.110.003.

MCC 17.110.680 addresses the administration of the Marion County Rural Zoning Code.

To the extent that an application for placement of a primary dwelling in an EFU zone is considered the development of housing, ORS 197.307(4) requires clear and objective standards. Terms not defined in the Marion County Rural Zoning Code shall have their ordinary accepted meanings within the context in which they are used. MCC 17.110.005.

ORS 17.110.680, in relevant part, provides that no permit for the use of land or structures shall be issued if the land for which the permit or approval is sought is being used in violation of local, state, or federal law. "Shall" is mandatory and not directory. MCC 17.110.005(D). While "violation of local, state, or federal law" is broad, it is not ambiguous. If the land for which the permit or approval is sought is being used in violation of local, state, or federal law, the hearings officer is mandated to deny the Application.

In *Roberts v. City of Cannon Beach*, 316 Or App 305, 504 P3d 1249 (2021), the Court held that "clear and objective standards" refers to whether the standard itself, when read in context is clear and objective. "Clear and objective standards" does not prohibit the

standard from containing terms that are imprecise or ambiguous, which is a relevant consideration in analysis of whether a standard is clear and objective.

The Court further discussed LUBA's view in *Home Builders Assoc. v. City of Eugene*, 41 OR LUBA 370, 393 n. 20 (2002) that the ultimate question under ORS 197.307(4) is whether the standard is clear and objective viewed in context. The existence of imprecise or ambiguous terms in a standard does not resolve whether the standard violates ORS 197.307(4). *Roberts v. City of Cannon Beach* at 315.

Applicants argue that requiring compliance with respect to local, state, and federal law is a "general concept" and questions how the county decides with which laws it will require compliance. It is agreed that it would be unreasonable and overstepping for the County to actively confirm compliance with all local, state, and federal laws. However, in this case, public comments were sought, and the County was provided with evidence of violation of state law on the subject property. The violation of state law (unlawful appropriation of ground water) allowed Applicant to meet the criteria for a primary farm dwelling in MCC 17.136.030(A).

16. To overturn a local government's denial on evidentiary grounds, the petitioner must demonstrate that the evidence supporting the application is such that a reasonable person could only conclude that the applicable criteria are satisfied. *Tigard Sand and Gravel, Inc. v. Clackamas County*, 33 Or LUBA 124, 138, *aff'd* 149 Or App 417, 943 P2d 1106, *adhered to on recons* 151 Or App 16, 949 P2d 1225 (1997).
17. ORS 537.535 prohibits a person to use or attempt to use any ground water or attempt to construct any well except upon compliance with the Ground Water Act of 1955 as codified in ORS 537.

The Amended Notice of Assessment of Civil Penalties and Damages and Opportunity for a Hearing – Unlawful Appropriation and Storage of Ground Water, Including Well Construction and Operation includes the significant findings: On September 2, 2020, OWRD staff observed appropriation of ground water from a well for irrigation purposes without the benefit of a water right on the subject property. On June 2, 2023, staff confirmed that water was again being appropriated and stored without a water right on the subject property.

Mr. Ivanov's Affidavit (Paragraph 6) supports the proposition that he does not presently possess water rights to irrigate the subject property.

During the years farm income was generated on the subject property, it was generated by the sale of farm products irrigated in violation of state law.

18. ORS 197.835(10)(a) states that the board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances.

The decision to deny the Application is not outside the range of discretion allowed to the Planning Director and Hearings Officer under its comprehensive plan and implementing ordinances. To the contrary, MCC 17.110.680 mandates that the letter and spirit of the Marion County Rural Zoning Code be followed. MCC 17.110.680 requires an applicant to “play by the rules” to obtain the benefit of obtaining a primary farm dwelling in the EFU. Because the evidence supports that the Applicants used unlawfully appropriated water to grow their farm products, the income produced by the sale of those products cannot be used to meet the income requirements of MCC 17.136.030(A)(1)(b).

19. Based on the above findings, it has been determined that because the land for which the approval is sought has been used in violation of state law, the Application is **DENIED**.

VII. Order

It is hereby found that although Applicants have met the burden of proving the applicable standards and criteria for approval of the Administrative Review Application to place a primary farm dwelling on a 17.50 acre parcel on in the EFU zone by providing proof that requisite annual income from the sale of farm products was earned on the subject tract, the income from the sale of farm products was produced in violation of ORS 537.535(1) and (2). MCC 17.110.680 precludes approval of the Application for placement of a primary farm dwelling because the land has been used in violation of state law. The Administrative Review Application is DENIED.

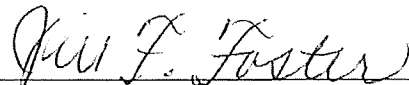
IX. Effective Date

The application approved herein shall become effective on the 24th day of September, 2023, unless the Marion County Board of Commissioners, on its 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 final action as is taken by the board

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, Oregon) by 5:00 p.m. on the 23rd day of September, 2023 (15 days after the date of the Order). The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be returned.

DATED at Salem, Oregon this 8th day of September, 2023.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Fredosiy & Fionya Ivanov
17800 Block of Boones Ferry Rd NE
Woodburn, Oregon 97071

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

Jamie Howsley
1211 SW 5th Ave 27 Floor
Portland, Oregon 97204

Public Works LDEP Section (via email)
jasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

Alice Engelman
11714 Broadacres Rd NE
Hubbard, Oregon 97032

School District: North Marion (via email)
ginger.redlinger@nmarion.k12.or.us

Merle Stutzman
11623 Broadacres Rd NE
Hubbard, Oregon 97032

Code Enforcement (via email)
CGoffin@co.marion.or.us
JTaylor@co.marion.or.us
rgoe@co.marion.or.us

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

State Agencies Notified:
N/A

1000 Friends of Oregon
534 SW 3rd Ave Suite 300
Portland, OR 97204-2597

Special Agencies Notified:
N/A

Pudding River Watershed Council (via email)
anna@puddingriverwatershed.org
cleanpuddingriver@gmail.com

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
Rweisner@co.marion.or.us
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

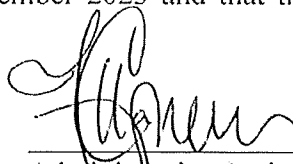
Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: Woodburn
1776 Newberg Hwy
Woodburn, Oregon 97071
gibbsj@woodburnfire.com

Planning Division (via email)
breich@co.marion.or.us
lking@co.marion.or.us

AR 23-007 – ORDER
IVANOV

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 8th day of September 2023 and that the postage thereon was prepaid.

A handwritten signature in black ink, appearing to read "A. Newman", written over a horizontal line.

Administrative Assistant to the
Hearings Officer