

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

NOTICE OF DECISION ADMINISTRATIVE REVIEW CASE NO.22-001

APPLICATION: Application of Norman Bickell on behalf of Dustin and Kanoe Barth for an administrative review to place a primary farm dwelling on a 20.00 acre parcel in an EFU (Exclusive Farm Use) zone located in the 8000 block of Dennison Rd SE, Sublimity (T8S; R1E; Section 31; tax lot 100).

DECISION: The Planning Director for Marion County has **RECONSIDERED** and **DENIED** the above-described Administrative Review.

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

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **March 31, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 1, 2022**, unless appealed.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations. Dwellings in conjunction with farming may be approved subject to certain criteria.
2. The subject property is located on the east side of Dennison Rd, 0.3 miles north of its intersection with Coon Hollow Rd. The property is bare and is farmed in conjunction with the parcel directly south. The property is described by deed in its present configuration on June 5th, 1974 and is therefore considered legal for land use purposes.
3. Surrounding uses are farm in all directions, with all adjacent parcels zoned EFU and planted with various farm crops. Some properties have dwellings but many are large and vacant.
4. The applicants are proposing place a primary farm dwelling on the subject property.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements:

- A. *The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances.*
- B. *Utility work in the public right-of-way requires PW Engineering permits.*

Marion County Building Inspection commented that building permits are required for new construction.

Friends of Marion County submitted comments requesting denial based on aerial photography research that shows the parcel has not been planted with Christmas trees long enough to produce the income needed to qualify for a dwelling. These can be viewed in full in the file.

All other commenting agencies stated no objection to the proposal.

6. Primary farm dwellings located on high-value farmland may be approved when the standards in Chapter 17.136.030(A) (1) of the Marion County Code (MCC) are satisfied. These standards include:
- A. *There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;*
 - B. *The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;*
 - C. *The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;*
 - 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.*
7. There is no existing dwelling on the subject parcel and the applicant does not own any additional farmland. The criterion in 7(A) is met.

The applicants submitted two invoices and subsequent deposit slips for the two payments described in the invoices. The dates on the invoices were 11/26/2021 and 1/3/2022. The amounts of the invoice were both \$80,250 paid by Ron and Rhonda Perry to the Barth Brothers Tree Farm. A review of aerial imagery shows that the property was farmed as grass seed or hay with the adjacent parcel to the south for many years. In 2021, an area approximately 2.25 acres in size was planted with what appears to be Christmas trees. A site visit was performed at the property, but the rolling hills topography prevented staff from being able to see over the hill of grass to be able to confirm whether trees had been planted or not. The application states that the tract had an income of \$80,250, but with the trees being planted the same year, it is impossible to raise them to a sellable height and maturity to generate this income. The same reasoning can be used for 2022, where the same amount of money was invoiced. The crop would have been greatly diminished from the previous year’s harvest on such a small, planted area and the trees would have only been two years old at this time. It takes approximately six to eight years for Christmas trees, specifically *Abies fraseri* (Fraiser Firs) to mature to a sellable height. Additionally, the applicant statement says “In 2022 the contract for Christmas trees have produced an income of \$80,250 (see attached deposit slip and invoice).” In talking with the applicant representative and in a letter they submitted, it was revealed that no Christmas trees had been harvested from the subject property and the income was based on the future right to buy the Christmas trees. The future sale of a Christmas tree is not a farm product or a farm use and does not constitute the sale of a farm crop, as no crop changed hands. Based on these facts, criterion 7(B) is not met.

The subject tract is employed for farm use. Criterion 7(C) is met.

The dwelling is proposed to be lived in by Dustin Barth, owner of Barth Brothers Tree Farm. criterion 7(D) is met.

8. In the reconsideration request the applicant did not provide any new information. The applicant presented a narrative arguing that staff incorrectly determined that a crop must be harvested to constitute farm income. The narrative reads in part “There are essentially three parts to this portion of the definition: (1) current employment of the land; (2) for the purpose of obtaining a profit in money; and (3) by raising, harvesting and selling crops. The County appears to believe that all these parts must occur each year, but this is not what the definition says. All that the definition requires is that the land be currently be put to a use that has a purpose of generating a profit by eventually raising, selling, and harvesting crops.”

The applicant's interpretation of the definition of "farm use" is incorrect. The definition clearly states that the crop must be harvested to be considered a farm use that constitutes farm income. With no trees harvested and no trees grown to maturity to be able to harvest, the income generated is not farm income. Additionally, it appears that many of the seedling trees died in the summer of 2021 making it unlikely that the applicant could raise \$80,000 of farm income with the current acreage planted.

Additionally, according to submissions by the applicant, approximately 9,300 trees were purchased from Drakes Crossing Nursery, however the dates of purchase, delivery and planting do not correspond with one another:

The first invoice of the seedlings for planting from Drakes Crossing Nursery is dated March 16, 2021, with a ship date the previous November 30, 2020 (see invoice 13156), the corresponding contracting service for planting those trees is dated March 21, 2021. The sale invoice to Ron & Rhonda Perry is dated November 26, 2021, for 1,500 Noble Fir trees. The trees appear to have been shipped before they were purchased.

The second submission of invoices from Drakes Crossing Nursery (invoices 13897 & 13939) is for a total of 6,300 trees (Noble Fir and Fraser Fir). This invoice is dated February 23, 2022, with a ship date of March 15, 2022, and the corresponding contracting service for planting those trees on February 27, 2022. The sale invoice to Ron & Rhonda Perry is dated January 03, 2022, for 1,500 Noble Fir trees. The trees appear to have been sold before they were purchased.

The dates for both set of invoices have inconsistencies. Additionally, the second year's set of trees were planted after the submission of this land use application was made on January 06, 2022. Applicant must address how the information they provided satisfies the criteria listed in MCC17.136.030(A).

Finally, the Oregon Department of Agriculture requires a license to sell more than \$1000 of Christmas trees in a year. Staff was not able to find a license for these sales. The applicant must address how these sales occurred without a license.

9. Based on the above findings, it has been determined that the request for reconsideration does not satisfy all the applicable criteria and is, therefore, **DENIED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 17, 2022

If you have any questions regarding this decision contact Austin Barnes 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.