

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. 21-029**

APPLICATION: Application of Jan Hupp on behalf of West Side LLC, for an administrative review to establish a primary farm dwelling on a 46.97 acre parcel in an EFU (Exclusive Farm Use) zone located in the 1700 block of Silver Springs Lane NE, Silverton. (T7S, R1E, Section 21, Tax Lot 300).

DECISION: The Planning Director for Marion County has **DENIED** the above-described Administrative Review, subject to certain conditions.

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 **December 23, 2021** If you have questions about this decision contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **December 24, 2021** 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 northeast side of Highway 214, approximately 0.07 miles north of the intersection of Silver Springs Lane and Hwy 214. There are no structures located on the subject property. The property was first described in its current configuration via deed recorded as Reel 2, page 227 in the Records of Marion County. The property is considered legal for the purposes of land use.
3. Surrounding properties in all directions are zoned EFU and are in a mix of small residential properties and large scale commercial farming operations.
4. The applicants are proposing to place a primary farm dwelling on the northwestern portion of the property.
5. Soil Survey of Marion County Oregon indicates 55.0% of the subject property soils are High-Value Farmland with soils consisting of McAlpin Silty Clam Loam, 0-3% slopes, 2-7% slopes, 7-12% slopes, 20-30% slopes, as well as Nekia Silty Clay Loam 2-7% slopes and water.
6. Marion County Building Division commented that building permits will be required for future development.

Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following Requirements be included in the land use decision:

ENGINEERING REQUIREMENTS

- A. An Access Permit will be required at the time of application for the building permits.

- B. Transportation & Parks System Development Charges (SDCs) will be assessed upon application for building permits.
- C. Utility work in the Coates Road public right-of-way requires separate PW Engineering permits.

Marion County Septic commented that t septic site evaluation will be required for this dwelling proposal.

All other contacted agencies stated no objections or had no comments to the proposal.

- 7. 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.*
- 8. There is no existing dwelling on the subject parcel and the applicant does not own any additional farm land. The criterion in 7(a) is met.

The applicant has provided Internal Revenue Service Schedule F documentation for 2019 and 2020 to demonstrate gross farm-income in excess of \$80,000 was produced from the sale of bare root Douglas Fir seedlings grown on the property. The Schedule F documents provided to staff are filed in the name of Jan H. Enterprises, LLC and it is unclear how Westside LLC produced this income separate from Jan H. Enterprises. Based on these facts, criterion 7(b) is not met.

The applicant states that the property is used to produce bare root Douglas Fir seedlings. Aerial imagery confirms that the property is used to grow tree seedlings. The growing of nursery stock is considered a farm use that can be used to generate farm income. Based on these facts, criterion 7(c) is met.

The applicant states that the dwelling will be occupied by Scott and Savannah Barnes, part of the Westside LLC management team. The applicant does not state how Scott and Savannah were involved in producing the commodities which generated the income. While the applicant states they are part of the management team, staff is unable to determine that they were involved in the bare root seedling production as opposed to office administrative tasks, for instance. Based on these facts, criterion 7(d) is not met.

- 9. Based on the above findings, it has been determined that the applicants' request to establish a primary farm dwelling on the subject property does not satisfy all applicable decision criteria and is **DENIED**.

Brandon Reich
Director-Planning Division

Date: December 8, 2021

If you have any questions regarding this decision contact Alyssa Schrems at (503) 588-5038.

Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.