

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. 22-032

APPLICATION: Application of Richard and Heather Stoller for an administrative review to establish a primary farm dwelling on a 32.11-acre parcel in an EFU (Exclusive Farm Use) zone located in the 13800 block of Ehlen Road NE, Aurora (T4S; R1W; Section 14B; Tax lot 300).

DECISION: The Planning Director for Marion County has **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 **December 1, 2022**, 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 2, 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 south side of Ehlen Rd NE, at its intersection of Boones Ferry Rd NE and Ehlen Rd NE. There is one accessory structure located on the subject property. The property was the subject of Variance 85-7, which was approved, and Administrative Review 21-036, which was denied, is considered legal for the purposes of land use.
3. Surrounding properties to the west, north and south are zoned EFU and to the northeast are zoned Public and Commercial. There are a mix of small residential properties and large-scale commercial farming operations as well as some commercial uses in their appropriate zones.
4. The applicants are proposing to place a primary farm dwelling on the northeastern portion of the property.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property soils are High-Value Farmland.
6. 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. At the time of application for building permits an Access Permit may potentially be required for a change-in-use of the permitted Boones Ferry Road field/shop access having Permit #21-001646-PW for combined residential use, if that is the intention.
- B. 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.

C. Utility work in the public right-of-way requires separate PW Engineering permits.

Oregon Department of Aviation commented on the proposed dwelling (see file for full comments).

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;*

The subject parcel does not contain any dwelling and is being used by the farm operator, Richard Stoller, for farm use. The criterion is met.

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;*

To satisfy the above criterion, the applicant has submitted a variety of financial information pertaining to the sale of farm products from the subject parcel. Specifically, the applicant submitted tax forms 1120-S, 4562, 4797, and other related tax forms from 2021. Additionally, the applicant submitted a letter of certification from Curtis Sawyer, CPA, invoices from two buyers who purchased pumpkins, and two bank statements showing the deposits from the two invoices.

The above-mentioned tax documents and CPA letter were submitted to prove the applicant made the necessary income of at least \$80,000 in gross income from the sale of farm products on land owned by the applicant from the tax year 2021. As stated in an email thread with the applicant, the applicant does not own any other land than the subject parcel. In fact, the applicant is leasing approximately 310 acres with 140 acres consisting of filberts not yet in production.

The various tax documents submitted to staff were for Stoller Applications, LLC of which Richard and Heather Stoller (applicants) are members of. According to line 9 on page 10 in Form 4797 of the submitted tax documents, Stoller Applications, LLC grossed \$289,966 in income. Per an email exchange with the applicant and the submitted applicant statement, he stated that \$85,057.88 of the reported gross income came from the sale of farm products from the subject parcel, the only parcel he owns. Additionally, the self-reported \$85,057.88 in gross income came from the sales of filberts and filbert tree starts. According to the applicant's statement that was submitted with the land use application, of the \$85,057.88, \$1,276.88 came from the sale of filberts while the remaining \$83,781 came from selling approximately 12,412 tree tie offs, or tree starts, for \$6.75 each to three separate individuals, which, based on staff research, appears to be a reasonable claim.

To understand the harvesting process for filbert tree starts and to explain how the reported filbert tree starts were grown and harvested at the subject parcel, the applicant was asked to explain how they are harvested. According to the applicant via email, "The tree starts were grown off of were 6 years old at the time of harvest. The process of growing and harvesting tree starts consists of letting the suckers grow on every tree, and then plucking off the bottom 10 leaves of each sucker, wrapping each tree with roofing paper, then pinching and stressing each sucker with a steel hog ring, then spraying a rooting compound on each sucker, then filling the roofing paper up with sawdust and keeping the sawdust moist throughout the summer."

The fact that tree starts, as the applicant claimed, were harvested off six-year-old filbert trees, is notable considering that a previous land use case, Administrative Review 21-036, concluded that the filbert trees on the subject parcel were planted in 2019 while current aerial imagery confirms this. Subsequently, the applicant was asked by staff if the filbert trees being harvested for tree starts on the subject parcel were at least six years old and the applicant failed to confirm the age of the filberts on the subject parcel. Specifically, the applicant responded by stating, "The tree starts were grown off of were 6 years old. The tree starts that are being harvested and sold to be replanted as filbert tree is about a 7-8 month growth process before they are harvested." When asked again by staff how old the filbert trees on the subject parcel were, the applicant gave the same response. The failure of the applicant to confirm the age of the filbert trees on the subject parcel coupled with the aerial imagery of the property, leads staff to conclude that the filbert tree starts, being approximately three years old, were not mature enough to be harvested, disqualifying this portion of the required gross income from the sale of farms products.

A major portion of the required income of \$80,000 for 2022 comes from the sale of pumpkins. According to the applicant's statement, the pumpkins that were sold were grown on site using 3.3 acres of the subject parcel. The applicant also claimed that from the 3.3 acres (see site plan), the yield per acre was approximately 18,500 pounds for a total of 61,050 pounds. Of the 61,050 pounds, 35,000 pounds were sold to Dale Lovett and 20 boxes were sold to Moana Nursery; the applicant has stated that each box weighs about 1,000 pounds. Additionally, the pumpkins sold to Dale Lovett were sold at a rate of \$2.25 per pound while the 20 boxes sold to Moana Nursery were sold at a rate of \$125.00 per box or \$0.125 per pound (price per box divided by weight per box).

In evaluating the claim of yield per acre and price per pound, some of the applicant's claims are not consistent with data researched by staff. Regarding the yield per acre, the data found stems from statistics gathered by the United States Department of Agriculture (USDA). According to data about yield per acre, the USDA surveyed pumpkin farmers from the years 2016 to 2021 and calculated it as hundredweight (CWT) per acre. The average CWT (112 pounds) per acre from the years 2016 to 2021 was approximately 245 per acre. When converted to pounds per acre, the average yield per acre in pounds for those same years was approximately 27,533 pounds (see file for data). The applicant's claim that his yield per acre was approximately 18,500 pounds is a reasonable claim and, therefore, accepted by staff. However, applicant's claim of the rate per pound is not completely consistent with the data researched by staff.

The rates per pound between the two pumpkin sales vary widely equating to a difference between the two sales of \$2.25. To understand an approximate price per pound, staff used the same USDA survey data mentioned previously. According to the survey, price per CWT varied, but averaged approximately \$17.00 per CWT. When converted to price per pound, the average price per pound from 2016 to 2021 was approximately \$0.15 per pound (price per CWT divided by 112 pounds or one CWT). Even if the highest price per CWT were used to calculate price per pound, specifically \$30.10 per CWT from 2021, this would only equate to approximately \$0.27 per pound which falls well below the applicant's claim of \$2.25 per pound. Additionally, the applicant was asked to verify the market rate for wholesale pumpkins but could not give an approximate price per pound. Based on the information staff received from the applicant and the data found the USDA survey, staff could not verify the applicant's claim that those 35,000 pounds of pumpkins grown on-site and sold at \$2.25 per pound to Dale Lovett was a reasonable market rate. Therefore, the criterion has not been met.

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

According to the applicant, the subject parcel is being farmed for hazelnuts and pumpkins. Specifically, the applicant has claimed that the farm is producing hazelnut tie offs, hazelnuts, and pumpkins. 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.*

The applicant has stated that himself, the farm operator producing the qualifying income, and his family will live in the proposed dwelling. This criterion is met.

8. 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
Planning Director/Zoning Administrator

Date: November 18, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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