

County Commissioners

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MARION COUNTY PUBLIC WORKS**MEMORANDUM**

TO: Marion County Planning Commission
FROM: Marion County Planning Division/Speckman
DATE: May 20, 2024
SUBJECT: Conditional Use 25-014/Fobert

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments.

FACTS:

1. Application of Brett Allen Fobert for a conditional use permit to operate a towing business as a home occupation on a 22.45-acre lot in an EFU (Exclusive Farm Use) zone located at 17644 Painter Loop NE (T4S; R3W; Section 34; Tax lots 800).
2. The property is located on the east side of the Urban Growth Boundary (UGB) for the City of Hubbard. The northern 20-acres contain a field in grass seed production, and an agricultural structure in use for storage and maintenance of farm vehicles and equipment utilized by the Fobert family across their farms. A graveled area around the agricultural structure is used for storage of hay trailers and vehicles. The southern 2-acres contain the homesite. The homesite contains a dwelling and a couple accessory structures east of the dwelling. To the west of the dwelling is a graveled parking area where the applicant's tow trucks are being stored.
3. Surrounding properties immediately adjacent to the north and east are zoned Exclusive Farm Use and in current farm use. Properties to the east across Painter Loop NE are within the Urban Growth Boundary (UGB) for Hubbard and zoned Urban Transition (UT) These parcels consist primarily of residential properties, with the exception of a 10-acre property in farm use. To the south are a few properties zoned Acreage Residential, and in use for rural residences. South of these rural residential properties, and across Painter Loop NE, are EFU zoned properties in use for farm operations and rural residences.

COMMENTS:

4. Marion County Planning requested comments from various agencies. Those comments provided are included as follows in this section.

Marion County Septic commented: "Marion County does not have history of a septic system on this property. An authorization is required to connect any plumbing or, if plumbing is present, is

required for the change of use. If no system exists on the property or a new one is proposed, a site evaluation followed by a construction installation permit is required. Note: The drainfield initial and replacement areas must be free of all vehicular traffic per OAR 340-071-0130(12)."

Marion County Building Inspection commented: "No Building Inspection concerns, based upon the information provided in the application(s)."

Marion County Land Development, Engineering and Permits (LDEP) requested the following be included:

ENGINEERING CONDITION

Condition A – Within 30 calendar days from the date of land use full approval, obtain an Access Permit to pave the Painter Loop Road driveway approach with hot mix asphalt for a distance of 50 feet back from the roadway edge of pavement. Within 60 calendar days thereafter, cause the paving to be completed.

Marion County Code Enforcement provided images of the subject parcel and suggested parking the tow trucks offsite.

Friends of French Prairie commented in opposition of the application and provided the minutes from a Hubbard Planning Commission hearing related to a conditional use permit for a tow truck business owned by the applicant within the City of Hubbard. The full comments are included in the case file.

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

STAFF FINDINGS AND ANALYSIS:

5. The applicant is proposing to park five tow trucks associated with his tow truck business on his property. The tow trucks involved are two wreckers, two flatbeds, and one backup truck.
6. Since the property is located in an EFU zone, the proposal must satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
 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. For purposes of this section, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*
 - (A) *Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*

The subject parcel is east adjacent to the UGB for Hubbard. Uses to the west are therefore transitional and urban uses, primarily residential. Uses to the north, west, and

south are a mix of rural residential and farm uses. There are no forest uses in the immediate area.

The farms near the subject parcel appear primarily devoted to grass seed and/or hay production. The subject parcel includes approximately 19-acres devoted to hay production.

- (B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*

The applicant contemplated the potential impacts of the proposed tow truck home occupation on the surrounding farm uses, including his own. These primary potential impact of the proposed home occupation on surrounding farm uses is increased traffic. The applicant and his son leave and return to the property in one of the tow trucks as they each performs tows. The applicant estimates that there are an average of six trips per day. The closest farming operation to the proposed use is the subject parcel itself, which has not been the subject of significant impact.

- (C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*

The only identified impact is from trip generation of six trips per day which is not unlike traffic generated by a farm operation and cannot be said to have significant influence or effect on those farm operations around the subject parcel.

- (D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*

The traffic impact is not unlike traffic generated by a farm operation and cannot be said to have significant influence or effect on those farm operations around the subject parcel.

- (E) For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsection (a) and (b).*

This criterion does not apply to the proposed home occupation.

- (F) In the consideration of potentially mitigating conditions of approval under ORS215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).*

The County recognizes this requirement. No conditions of approval are being imposed on affected farm or forest landowners, nor are any landowners being compelled to accept payment as compensation for significant changes to, or significant increases in costs of, accepted farm and forest practices in the area.

The applicant provided, and staff has reviewed, the above analysis of the proposal subject to the Farm Impacts Test in ORS 215.296(1) subsection (a) and (b) via the process outlined in subsection (c)(A-F), which shows that the proposal to establish a tow truck business as a home occupation on the subject parcel will not force a significant change in, nor significantly increase the cost of accepted farm practices in the area. No forest practices exist in the area. The Farm Impacts Test is met.

2. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The subject parcel is served by the Hubbard Fire District and the Marion County Sheriff's Department. A well with pump on the property exists as a water source to the existing dwelling. The criterion is met.

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.*

No aspect of this proposal appears to have any potential impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and/or water quality. Nevertheless, this shall be a continuous condition of approval. The criterion is met.

4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The applicants state that no noise will be associated with the home occupation, as the services take place off the property. This lack of noise indicates no significant adverse impact on nearby land uses. The criterion is met.

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.*

There are no water impoundments, mineral or aggregate sites identified in the comprehensive plan near this property. The criterion is met.

7. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in-conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria in MCC 17.136.060 (C):

- (a) *A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, nonresident employee, partner or any other person).*

The home occupation is carried on by the residents of the subject parcel, Brett Fobert and his son. Any future employees who do not live on site may only be hired for

administrative work onsite as per the limitation on assembly and dispatch of employees in MCC 17.120.075(M). The applicant explained that there are 3-4 farm employees who work seasonally on the subject parcel, but not in conjunction with the tow truck business. The criterion is met.

- (b) *It shall be operated substantially in:*
- i. The dwelling; or*
 - ii. Other buildings normally associated with uses permitted in the zone in which the property is located.*

The applicant proposes parking his tow trucks next to his home in an existing gravel parking area. He may conduct administrative work related to the tow truck business within his residence. There is a large structure on the northern side of the parcel built with an agriculturally exempt permit and used for maintenance of farm vehicles and equipment, as well as storage of farm equipment, materials and incidental personal vehicles and items. This structure is not in use as a part of the tow truck business, and this shall be a condition of approval.

The home occupation is primarily operated offsite where the towing occurs. This application is primarily to approve the subject parcel to be the base of operations and parking location for the tow trucks associated with the business. There are five tow trucks on the subject parcel. One is a backup tow truck. The other four consist of two pairs of wreckers and flat beds. The different styles of tow truck are utilized for different towing scenarios. Both the applicant and his son operate one of each, depending on what kind of tow they're called out too. The criterion is met.

- (c) *It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.*

The proposed use will primarily impact traffic from the applicant leaving the property to tow vehicles from one place to another, which will not significantly increase traffic levels compared to typical rural residential and farm activities. This travel is similar to that of other individuals leaving their properties for work. Given the absence of significant foreseeable impacts, the proposed use shall not unreasonably interfere with other uses permitted in the zone. The criterion is met.

- (d) *A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.*

The applicant does not propose operating the home occupation in a structure accessory to farm use on the property, which does consist of high value soils. This application was the result of code enforcement, based on a complaint about operation of a towing business and an alleged automotive repair business within an agricultural structure on the subject parcel. The structure in question was built with an agriculturally exempt permit. The applicant attests that it is not used in conjunction with the proposed home occupation. The applicant states that the agricultural building and surrounding parking area is utilized for storage of trailers for hauling hay, farm equipment, and farm vehicles. Staff visited the site on May 19th, 2025 to see the parking area of the tow trucks and the agricultural structure. Staff saw that the contents of the parking area around, and the inside of, the agricultural structure matched the description of the applicant. The applicant attests that maintenance of farm vehicles and equipment owned by the Fobert family occurs within

the structure, with some incidental personal vehicle maintenance. The applicant attests that the family farming operation involves other properties within Marion County beyond the subject parcel. The criterion is met.

- (e) *A sign shall meet the standards in Chapter 17.191 MCC.*

No sign is proposed. This shall be a condition of approval.

- (a) *The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.*

The applicant attests that no employees assemble or dispatch from the property. The applicant is the owner and operator of the business. There are multiple tow trucks on the property that are all used by the applicant and his son. Both the applicant and his son live on the subject property. It shall be a continuous condition approval that no employees assemble or are dispatched from the subject parcel. Failure to comply with this condition of approval may result in the Planning Director revoking this conditional use permit.

- (g) *Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.*

Retail sales are not proposed. The criterion is met.

CONCLUSION:

8. In conclusion, Staff finds that with conditions of approval the proposal can meet the criteria required for a conditional use home occupation in Marion County Code.
9. Marion County Planning Staff recommends APPROVAL of the proposal. Should the Planning Commission grant the applicant's request for a conditional use home occupation the Planning Division recommends the following conditions be applied:
 - A. The applicant(s) shall obtain all required building permits, including septic if needed, from the Marion County Building Inspection Division and Septic Division.
 - B. The applicant(s) shall record a Farm/Forest Declaratory Statement into the deed at the Marion County Clerk's Office.
 - C. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
 - D. Within 30 calendar days from the date of land use full approval, obtain an Access Permit to pave the Painter Loop Road driveway approach with hot mix asphalt for a distance of 50-feet back from the roadway edge of pavement. Within 60 calendar days thereafter, cause the paving to be completed.
 - E. The use shall not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

- F. A home occupation shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, nonresident employee, partner or any other person.)
- G. The home occupation shall be operated substantially in the dwelling; or other buildings normally associated with uses permitted in the zone in which the property is located.
- H. The home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
- I. A home occupation shall not be authorized in structures accessory to resource use on high-value farmland. The agricultural building on the parcel shall not be utilized in conjunction with the tow truck business.
- J. Any sign shall meet the standards in Chapter 17.191 MCC.
- K. Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.
- L. The applicant shall not park more than five tow trucks on the subject parcel.
- M. The applicant shall not tow any vehicles to park the subject parcel that are not owned by the applicant.
- N. Any agricultural vehicles or equipment that are towed to the subject parcel shall be primarily devoted to farm purposes, and owned or leased by the property owner or their family.
- O. The home occupation shall be continuously conducted in such a manner as not to create any public or private nuisance, including, but not limited to, offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. In a residential zone noise associated with the home occupation shall not violate Department of Environmental Quality standards or Chapter 8.45 MCC, Noise.
- P. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.
- Q. The applicants should contact Hubbard Fire District to obtain a copy of the District’s Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.