

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the)
Application of:)
Johnny C. Davidson)

Case No. ZC/CP24-003

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1479

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Johnny C. Davidson to change the zone from EFU (Exclusive Farm Use) to AR-10 (Acreage Residential) and to change the Comprehensive Plan designation from Primary Agriculture to Rural Residential on a 2.00-acre parcel located at 11679 McClellan Rd. SE, Aumsville (T9S; R2W; Section 13DA; Tax lot 2000).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on November 7, 2024, and on January 13, 2025, issued a recommendation to approve the zone change. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board has considered all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Additional Findings of Fact and Conclusions of Law contained in Section V and VI of the Hearings Officer's decision dated January 13, 2025, contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested zone change from EFU (Exclusive Farm Use) to AR-10 (Acreage Residential) and to change the Comprehensive Plan designation from Primary Agriculture to Rural Residential is hereby **GRANTED**, subject to conditions identified in Exhibit A, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is identified on a map in Exhibit B, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed

pursuant to Marion County Code Section 17.110.660 to reflect the new zoning subject to conditions identified in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 2nd day of April, 2025, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of)	Case No. ZC/CP 24-003
)	
)	COMPREHENSIVE PLAN
JOHNNY C. DAVIDSON)	AMENDMENT / ZONE CHANGE

RECOMMENDATION

I. Nature of the Application

This matter comes before the Hearings Officer on the Application of Johnny C. Davidson to change the zone from EFU (Exclusive Farm Use) to AR-10 (Acreage Residential, 10 Acres) and to change the comprehensive plan designation from Primary Agriculture to Rural Residential, with an exception to Statewide Planning Goal 3 (Agricultural Land) on a 2.0 acre parcel located at 11679 McClellan Rd. SE, Aumsville (T9S; R2W; Section 13DA; Tax lot 2000).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Oregon Statewide Planning Goals, Marion County Comprehensive Plan Policies (Rural Residential Policies), Oregon Administrative Rule 660-004-028, and Marion County Code Chapter 17, especially 17.128 (Acreage Residential Zone), 17.136 (Exclusive Farm Use Zone), and 17.123 (Zone Change Procedures).

III. Public Hearing

A public hearing was held on this matter on November 7, 2024. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

- | | | |
|----|-----------------------|---------------------------------|
| 1. | John Speckman | Marion County Planning Division |
| 2. | Margaret Y. Gander-Vo | Attorney for Applicant |

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

IV. Executive Summary

Applicant seeks to change the zone from EFU (Exclusive Farm Use) to AR-10 (Acreage Residential, 10 Acres) and to change the comprehensive plan designation from Primary Agriculture to Rural Residential, with an exception to Statewide Planning Goal 3 (Agricultural Land) on a 2.0 acre parcel located at 11679 McClellan Rd. SE, Aumsville, Oregon. The subject property is currently developed with a permanent dwelling (since 1870) and a hardship dwelling

(since 1982). Applicant proposes to convert the hardship dwelling to a second permanent dwelling on the property. Applicant is not proposing significant change or development but is seeking approval based on current use. There does not appear to be any significant change to farm use with approval of the application. Applicant has established compliance with all applicable criteria, and the hearings officer recommends **APPROVAL** of the application.

V. Findings of Fact

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

1. The subject parcel is located approximately 2.5-miles southwest of the Aumsville Urban Growth Boundary. The parcel is within the Santiam Water Control District. The subject parcel is 2-acres and contains a temporary medical hardship manufactured dwelling placed in 1991, a residence built in 1870, and several small accessory structures. The subject parcel consists of 100% high value soils according to the Marion County Soils Data (Clackamas Gravelly Loam, Salem gravelly silt loam, and Sifton gravelly loam).
2. Adjacent properties to the north are zoned AR and composed of rural homesites smaller than 1-acre in size. Adjacent parcels to the west are zoned EFU and composed of homesites and agricultural uses on lots ranging from 10 to 30-acre areas. Adjacent to the south across West Stayton Rd SE, are more EFU zoned properties in a mix of rural residential and farm uses, ranging in lot sizes from 2.5 to 62-acres.
3. The applicant seeks a zone change from EFU (Exclusive Farm Use) to AR-10 (Acreage Residential) in order to qualify the 1870s home as an ADU (Accessory Dwelling Unit) under MCC 17.128.020(J)(3) and convert the temporary medical hardship to a primary dwelling.
4. Marion County Planning Division requested comments from various governmental agencies:

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

ENGINEERING REQUIREMENT

- A. Upon conversion of the medical hardship dwelling to a single-family dwelling through the Building Department permitting process, Transportation System Development Charges (SDCs) and Parks Fee will be assessed.

All other agencies either declined to comment or stated no comments or objections to the proposal.

5. The Application was signed by Johnny C. Davidson, and the submitted Bargain and Sale Deed, recorded at Reel 3774, Page 175 evidences that property is vested in Johnny C. Davidson.

VI. Additional Findings of Fact and Conclusion of Law

1. Applicant has the burden of proving compliance with all applicable criteria.

STATEWIDE PLANNING GOALS

2. The proposal must be consistent with the statewide planning goals or seek exceptions to them. The relevance of each goal in this proposal is addressed below.

Goal 1: Citizen Involvement

The notice and hearing process provides an opportunity for citizen involvement. The goal is satisfied.

Goal 2: Land Use Planning

The application for a zone change and comprehensive plan change has been submitted with Marion County Planning Department to review compliance with applicable zoning ordinances. The Marion County staff recommendation will be presented to the Hearings Officer for consideration and application of applicable case law. The Hearings Officer will make a recommendation to the Marion County Board of Commissioners who will make the decision on behalf of the County. The goal is satisfied.

Goal 3: Agricultural Lands

The proposal requires a goal exception for Goal 3, discussed in detail below, and the applicant is seeking an “irrevocably committed” goal exception.

Goal 4: Forest lands.

The subject property has not been determined to be forest land. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

The subject property is not affected by this goal, the goal does not apply.

Goal 6: Air, Water and Land Resources Quality

The subject property is within the Santiam Water Control District. The proposed comprehensive plan designation and zone change would not result in a change of use that would affect the quality of air, water, or land resources. The goal is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards

The subject property is not within a floodplain or geohazard area. The goal does not apply.

Goal 8: Recreation needs

No recreational space is present on the subject property. The goal does not apply.

Goal 9: Economic Development

The subject property is not related to any job creation or employment. The goal does not apply.

Goal 10: Housing

This goal applies to land within urban growth boundaries. This goal does not apply.

Goal 11: Public Facilities and Services

The applicant is not proposing the need for public water or sewage services to be extended. This goal does not apply.

Goal 12: Transportation

The proposal is not a transportation project. This goal does not apply.

Goal 13: Energy Conservation

The proposal is not an energy related project. This goal does not apply.

Goal 14: Urbanization

The proposal is for a zone change to Acreage Residential with a minimum lot size of 10-acres, therefore a goal 14 exception is not required and this goal does not apply.

Goal 15: Willamette River Greenway

The subject property is neither a part of nor adjacent to the Willamette River Greenway. This goal does not apply.

Goal 16: Estuarine Resources

The subject property and proposal are not within or adjacent to an estuary. This goal does not apply.

Goal 17: Coastal Shorelands

The subject property and proposal are not on the coast. This goal does not apply.

Goal 18: Beaches and dunes

The subject property and proposal will not affect beaches or dunes. This goal does not apply.

Goal 19: Ocean Resources

The subject property and proposal will not affect the ocean. This goal does not apply.

Goal Exceptions

3. Land use applications of this nature must be consistent with Statewide Planning Goals. In this specific case, the subject property is subject to statewide Goal 3 (Agriculture Land). There is a mechanism, however, for not applying the Goal to areas with certain

characteristics. This mechanism is the Goal Exception process that requires specific findings justifying why such lands are not available for resource use.

There are three types of exceptions to Statewide Goals that may be granted. The first two are based on the concept that the subject property is “physically developed” or “irrevocably committed” to a certain use. The third is a reasons exception where there is a demonstrated need for the proposed use or activity. In this case, the applicant asserts that the proposal qualifies for an “irrevocably committed” goal exception to Goal 3.

4. Goal exceptions are governed by Statewide Planning Goal 2. Goal 2 is implemented through Oregon Administrative Rule (OAR) 660-004. Under OAR 660-004-0028(1), a local government may adopt an exception to a goal when the land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impractical. According to OAR 660004-0028(2), whether land is irrevocably committed depends on the relationship between the proposed exception area and the lands adjacent to it. The findings for a committed exception must address the following:

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:*

- (a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).*

- (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.*

- (c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.*

- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

- (a) The characteristics of the exception area;*

- (b) The characteristics of the adjacent lands;*

- (c) The relationship between the exception area and the lands adjacent to it; and*

- (d) The other relevant factors set forth in OAR 660-004-0028(6).*

- (3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*
- (a) *Farm use as defined in ORS 215.203;*
 - (b) *Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
 - (c) *Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*
- (4) *A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.*
- (5) *Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.*
- (6) *Findings of fact for a committed exception shall address the following factors:*
- (a) *Existing adjacent uses;*
 - (b) *Existing public facilities and services (water and sewer lines, etc.);*
 - (c) *Parcel size and ownership patterns of the exception area and adjacent lands;*
- (A) *Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the*

resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

5. The property consists of a homesite, accessory structures and a medical hardship dwelling on 2-acre parcel. The primary dwelling was built in 1870, and the current hardship dwelling was placed in 1991. The original hardship was approved in 1982. Applicant requests a rezoning of the property on the grounds that the various rural residential developments on the property have irrevocably committed the subject parcel to rural residential uses and have rendered agricultural use of the subject parcel impracticable.

Goal 3 Exception

6. Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. Below we address the characteristics of the exception area, the adjacent lands, the relationship between them, and any other relevant factors.

Applicant argues that the subject property cannot be commercially farmed due to the long history of rural residential use, and the related development that has occurred on the subject parcel.

Based on the Marion County Soil survey, the soils present on the property are primarily high value soils consisting of class 2 and class 3 soils. The class 2 soils (Salem gravelly silt loam) are located on the eastern half of the property around the original 1870s dwelling, and an approximately half acre wooded area in the northeastern corner of the subject parcel.

The primary dwelling was built in 1870 has been in rural residential use for over 150 years. The earliest survey showing the subject parcel in its current configuration is a 1934 survey of the West Stayton subdivision. This neighborhood to the north of the subject parcel continues to exist in a similar configuration to its original 1911 plat and is zoned Acreage Residential. Several of the original smaller lots were combined to better accommodate well and septic, but the neighborhood still contains over twenty-five (25) dwellings in an area under fourteen (14) acres in size.

In 1982, a conditional use application for a temporary medical hardship dwelling was approved on the subject parcel. The hardship dwelling has continued to exist ever since. Current code requires hardship dwellings to be accessed from the same driveway as the primary dwelling, but the subject parcel's hardship dwelling is accessed via a secondary driveway off West Stayton Rd SE, and addressed as such 12054 West Stayton Rd SE. This secondary driveway is large and includes access to two accessory structures and a parking area. Over the lifetime of the subject parcel several accessory structures have been constructed spread across the property.

The irrevocably committed exception argument in this proposal is based on the amount of development on the subject parcel. Applicant asserts that the level of development has irrevocably committed the subject parcel to rural residential uses, and therefore should be correspondingly designated and rezoned.

The entire parcel is two-acres, which is the minimum size of a newly created Acreage Residential parcel. Of those two acres, a quarter acre has been developed for driveway and parking purposes. The structures, including the temporary medical hardship dwelling, total approximately 0.16-acres. The frontage on West Stayton Rd SE includes powerlines over an area that uses approximately 0.17-acres of the subject parcel. The septic drainfield is in the northwestern corner of the property, directly north of the medical

hardship dwelling, and precludes approximately 0.13-acres from any other use. The naturally forested northeastern corner, and the tree line along the northern and western property lines is over an area of approximately 0.67-acres. The current rural residential use of the subject property is therefore utilizing approximately 1.38-acres. The remaining 0.62-acres includes small buffer areas between these uses. Some of the remaining 0.62-acres of property must be designated and reserved for a future replacement drain field, but this is not shown on the applicant's site plan.

If the applicant didn't need a reserved area for a replacement drain field, if the applicant removed the quarter-acre stand of trees in the northwestern corner of the property, and if the applicant removed the temporary medical hardship dwelling, then the subject parcel would still have less than one-acre of available land to farm. This area would be separated from adjacent farm uses to the south and east by the location of the residential structures on the subject parcel. This hypothetical sub-acre area could not be practicably farmed for commercial purposes either alone or in conjunction with adjacent farm uses. Due to the level of rural residential development on the subject parcel, agricultural use on the subject property would be impracticable.

An irrevocable exception is not solely dependent on the nature of the subject parcel itself, but also its relationship with surrounding parcels. The adjacent agricultural uses to the subject parcel are to the west and south of the subject parcel. None of the parcels in agricultural use in this area are as small as the subject parcel. The western adjacent parcel is buffered by a farm access road and a row of large trees. The southern adjacent parcel is buffered by West Stayton Rd SE. This south adjacent road (West Stayton Rd SE), and the east adjacent private road (McClellan Rd SE) act as barriers bordering the parcel. The east adjacent parcel is split-zoned EFU on the southernmost portion, and AR on the northern three-quarters. This east adjacent parcel is in no particular use other than for an access easement (McClellan Rd SE) which leads to the north adjacent AR zoned neighborhood. Both the subject parcel, and north adjacent AR zoned parcels, have been in rural residential use for well over 50 years. This cluster of residences does not appear to have impeded the surrounding agricultural uses.

The proposal to change the zone and designation of the subject parcel would not cause any change in the existing development pattern and use of the area. The primary motivation for this zone change is relative to zoning regulations regarding Additional Dwelling Units (ADUs) in the Acreage Residential zone. The AR zone outright permits the use of dwellings constructed between 1850 and 1945 as additional dwelling units when replaced by a new primary dwelling unit (MCC 17.128.020(J)(3)). If the subject parcel were in the AR zone, the medical hardship dwelling could theoretically be re-permitted as a replacement primary dwelling that would not require removal or decommission of the existing 1870s primary dwelling. The proposed comprehensive plan designation and zone change would therefore permit the continuation of the existing configuration and rural residential use of the subject parcel that has existed since 1982.

The property is developed with a permanent dwelling, paved driveways which abut a shed, as well as another shed. The property is more similar in size and character to

adjacent parcels that are zoned AR rather than EFU and is not suitable for farm use given the size, topography, and surrounding development. The evidence provided by Applicant regarding characteristics of the subject property, the adjacent properties and the relationship between the two have shown that farm uses on the subject property are impracticable. The existing level of development relative to the acreage of the subject parcel, and the long history of rural residential use, has irrevocably committed the subject parcel to rural residential uses.

The proposal meets the criteria for an irrevocably committed exception in OAR 660-004-00028.

7. In 2000, the Department of Land Conservation and Development (DLCD) made rules in response to a 1986 Oregon Supreme Court Decision, *Curry County*, regarding which rural residential land is considered to be rural. DLCD determined that, in order to maintain the rural residential land as rural, and not urban, after October 4, 2000, zoning regulations applying to rural residential land existing at that time had to require a minimum parcel size of two acres, OAR 660-004-0040(8)(c) and (d). Zoning applied to land redesigned rural residential after October 4, 2000 had to require a minimum parcel size of ten acres in order to maintain the land as rural and not urban or take an exception to Goal 14, OAR 660-004-0040(8)(i).
8. OAR 660-004-0040(8)(i)(B) permits zoning with as low as a two-acre minimum parcel size to be applied to property designated as rural residential after October 4, 2000, if an exception to Goal 14 is taken. The minimum lot size adopted by the county must also be consistent with OAR 660-004-0018.
9. OAR 660-004-0010(1)(d)(D) establishes that an exception to Goal 14 must follow the applicable requirements in OAR 660-014-0030 or 660-014-0040, in conjunction with the requirements in OAR 660-004. OAR 660-014-0030 applies to rural lands irrevocably committed to urban level of development and the criteria in OAR 660-004-0028 also apply. 660-014-0040 applies to the establishment of new urban development on undeveloped rural lands, and is essentially a “reasons” exception, and the criteria in OAR 660-004-0020 and -0022 also apply.

No Goal 14 Exception Required

10. The exception area is a 2-acre parcel and the applicants have requested a zone change to AR-10 (Acreage Residential with a 10-acre minimum parcel size.) A Goal 14 Exception implies the potential creation of new lots as a result of a new designation and zone. This implication necessitates a determination of whether these lots would be categorized as Urban or Rural based on the *Curry County* decision.

Whether the applicant applied for AR-2 or AR-10, this proposal will not result in any new lots being created. Applying to change the zone to AR-2 would require the Goal 14 Exception, and any approval would still yield an undividable parcel. A Goal 14 exception for the proposal is not necessary.

COMPREHENSIVE PLAN AMENDMENT

11. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. Applicant has addressed the Statewide Planning Goals, and based upon the presented evidence, an exception to Goal 3 is justified and an exception to Goal 14 is unnecessary.
12. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to Planning's report or the hearing date.
13. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of one parcel of land and the proposal can therefore be considered under the quasi-judicial amendment process.
14. The proposal must be consistent with applicable Rural Residential Policies contained in the Rural Development chapter of Marion County Comprehensive Plan. These policies include:

8. *Since there is a limited amount of area designated Rural Residential efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than 2 acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10 acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.*

The subject parcel is exactly two-acres.

9. *When approving rural subdivisions and partitionings each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel.*

No division of the subject parcel is proposed.

10. *All residential uses in rural areas shall have water supply and distribution systems and sewage disposal systems which meet prescribed standards for health and sanitation.*

The property already has a water supply and sewage disposal system.

The proposal appears to be consistent with the Rural Residential policies in the Marion County Comprehensive Plan, and the comprehensive plan amendment approval is recommended.

ZONE CHANGE CRITERIA

15. The AR (Acreage Residential) zone purpose statement listed under MCC 17.128.000 states:

The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.

The proposed AR-10 zone represents the Comprehensive Plan designation of Rural Residential. The subject parcel is zoned Exclusive Farm Use and designated as Primary Agriculture. Applicant also proposes a comprehensive plan change because the proposed zone change is inconsistent with the underlying comprehensive plan designation.

The homesite on the subject parcel, and adjacent AR zoned neighborhood suggest that this area is suitable for the existing acreage homesites. The subject parcel already has a water supply and sewage disposal system.

The proposed zone change on the subject parcel appears to be consistent with the purpose of the Acreage Residential zone.

16. Under Marion County Code (MCC) 17.123.060, approval of a zone change shall include findings that the change meets the following criteria.

- A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*

The proposed zone is inappropriate for the current comprehensive plan designation of Primary Agriculture. Applicant proposes a comprehensive plan amendment so that the proposed zoning aligns with the goal and policies of the comprehensive plan. Applicant attests that the property's history of rural

residential uses, and rural residential development has made commercial farming impracticable. The criterion is met.

- B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*

Applicant states that the proposed change will allow for rural residential use that is consistent with the existing residential development in the surrounding area. Applicant's proposal is designed to continue the existing development pattern in the area and extend the existing AR zone adjacent to the north to include the property. Applicant performed a 2,000-acre study of surrounding uses, and provided a map of rural residential and farm uses within the area of study. The area of study includes two relatively dense areas of rural residential development. The subject parcel is south adjacent to the northernmost of these two rural residential areas. The primary use of the rest of the 2,000 surrounding acres is farm use. Of the land devoted to farm use, over half of these properties include farm dwellings. The subject parcel is already developed, so the proposed zone change will not result in any actual increase in density. Approval of the proposed zone change will therefore not alter the existing pattern of development in the area or otherwise have a significant impact on surrounding uses. The criterion is met.

- C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*

The subject parcel has been used as a rural residential homesite for over 150 years. Water and sewage disposal are available onsite. Stayton Fire District and Cascade School District. Marion County Sheriff's Office will serve the subject parcel. The property is located off a minor collector less than one mile west of an arterial road (Stayton Rd SE) which provides access to Stayton and Highway 22. Adequate public facilities and services are in place. The criterion is met.

- D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*

Applicant states that Marion County is in the midst of a severe housing shortage, and at the time of application, there were only three (3) properties for sale within the study area, one undeveloped lot, one farm parcel with a homesite, and one property engaged in primarily rural residential use, all of which are zoned EFU. Applicant argues that the housing shortage in the county signifies a lack of available rural residential designated land in the county. Staff posits that while the acreage residential zone is important for meeting the needs of the segment of the population desiring a rural homesite, it is not an appropriate or reasonable zone for solving the housing crisis. Urban residential zones with urban services can

achieve much higher densities and effectively provide significantly more housing with significantly less land removed from resource use. The subject parcel currently contains two dwelling units, a primary dwelling and a medical hardship, and would not be eligible for another once this zone change is approved due to the inherent restrictions of rural homesites. If this parcel was in an urban area with urban levels of service, it could be subdivided and developed to accommodate between 40 to 58 dwelling units depending on the residential zone.

The unique development on the subject parcel that began in 1870 with the primary dwelling is not readily available in the county. The proposed use of this primary dwelling as an ADU is restricted to parcels in the AR zone with a primary dwelling built between 1850 and 1945. There is, in fact, a lack of available AR zoned parcels with primary dwellings of this age range. Furthermore, the actual continued use of this parcel as a rural homesite with two dwellings will be the continuation of a use that has existed without disturbing the surrounding area for over 40 years. The criterion is met.

- E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The property is currently developed with the Permanent Dwelling and Hardship Dwelling. The proposed zone would not allow a more intensive development than already exists on the subject property. There is a long history of the rural residential use of this property in harmony with adjacent agricultural uses. The comprehensive plan change from Primary Agriculture to Rural Residential, and zone change from Exclusive Farm Use to Acreage Residential, will not change the existing use on the subject parcel and therefore not significantly adversely affect the allowed uses on adjacent properties zoned for less intensive uses. The criterion is met.

17. The zone change is recommended.
18. Marion County Planning Staff recommends approval of the proposal based on the existing record, and if an approval is recommended, recommends the following conditions of approval be applied:
 - A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
 - B. The applicant shall meet the requirements of MCC 17.128 for the AR (Acreage Residential) zone.

Applicant has shown compliance with all applicable regulations which would permit a zone change, comprehensive plan amendment, and an exception to Goal 3. A Goal 14

exception is not required. Applicant has shown that the application is in conformance with the applicable goals and policies of the Statewide Planning Goals, the Marion County Comprehensive Plan, and the Marion County Rural Zoning ordinance. The proposed comprehensive plan amendment and zone change are recommended. The proposed conditions of approval are necessary for the public health, safety, and welfare.

VII. Recommendation


It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of the amendment of a comprehensive plan designation from Primary Agriculture to Rural Residential, with an exception to Statewide Planning Goal 3 (Agricultural Land) on a 2.0-acre parcel located at 11679 McClellan Rd. SE, Aumsville, Oregon. Therefore, the Hearing Officer recommends that the Marion County Board of Commissioners **GRANT** the Application subject to the following conditions that are necessary for the public health, safety, and welfare:

1. Applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. Applicant shall meet the requirements of MCC 17.128 for the AR (Acreage Residential) zone.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this Application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 13th day of January, 2025.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

John Davidson
12054 West Stayton Rd.
Aumsville, OR 97325

Fire District: (via email)
Jay.alley@staytonfire.org
Jack.carriger@staytonfire.org

Margaret Gander-Vo
250 Church Street
Suite 200
Salem, OR 97301

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

Area Advisory Committee 2: (via email)
denk@wvi.com

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

1000 Friends of Oregon
133 SW 2nd Ave
Portland, OR 97204-2597

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldp@co.marion.or.us
JShanahan@co.marion.or.us

Roger Kaye (via email)
Rkaye2@gmail.com
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

School District: (via email)
charmon@cascade.k12.or.us

County Agencies Notified:

State Agencies Notified: (via email)
karen.grosulak-mccord@dlcd.oregon.gov
sarah.marvin@state.or.us

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

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

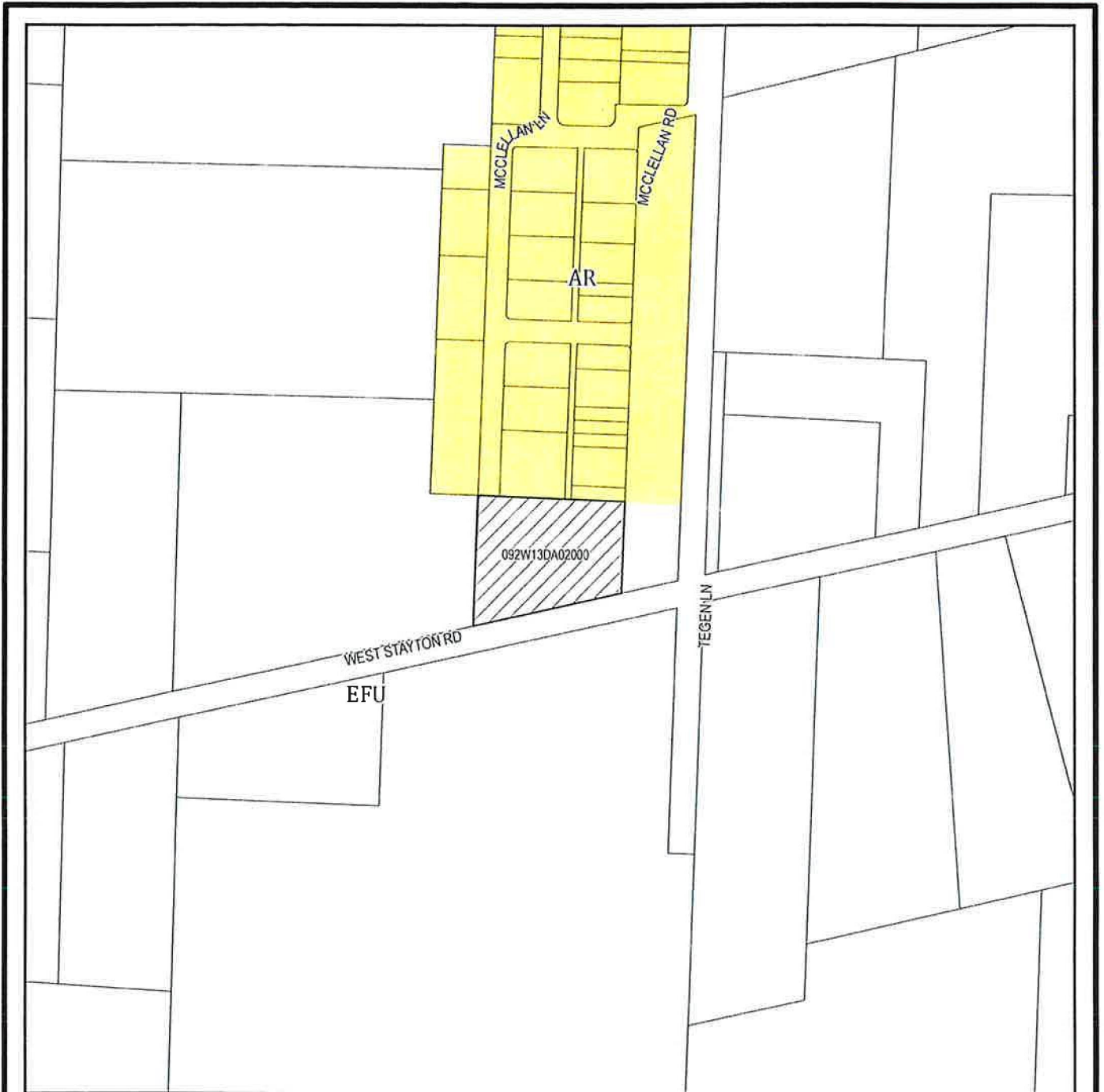
Special Agencies Notified: (via email)
Jill Engel
P.O. Box 1261
Salem, OR 97039
info@marionfarm.com

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

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 13th day of January, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer



ZONING MAP

Input Taxlot(s): 092W13DA02000

Owner Name: DAVIDSON, JOHNNY CLEVE

Situs Address: 11679 MCCLELLAN RD SE

City/State/Zip: AUMSVILLE, OR, 97325

Land Use Zone: EFU

School District: CASCADE

Fire District: STAYTON

Legend



Input Taxlots

Lakes & Rivers



Highways



Cities



scale: 1 in = 321 ft

DISCLAIMER This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: April 2, 2025

Department: Public Works

Title: Consider adoption of an administrative ordinance approving Zone Change/Comprehensive Plan Change (ZC/CP) 24-003/Johnny C. Davidson

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 5 min Contact: John Speckman Phone: 503-566-4173

Requested Action:

Staff recommended motion: Approve the administrative ordinance approving Zone Change/Comprehensive Plan Change (ZC/CP) 24-003/Johnny C. Davidson.
Other motion options for consideration are:
1. Direct staff to make changes and approve a modified ordinance.
2. Not approve the ordinance.

**Issue, Description
& Background:**

The Marion County Hearings Officer held a duly noticed public hearing on November 4, 2024 and issued a recommendation on January 13, 2025 to approve Zone Change/Comprehensive Plan Change 24-003. The Board held a duly noticed public hearing on the application on February 19, 2025, and considered all the evidence in the record and approved the request.

The ordinance and findings have been prepared and notice of adoption was given on March 19, 2025. The administrative ordinance is now set for formal adoption.

Financial Impacts:

None

**Impacts to Department
& External Agencies:**

None

List of attachments:

Ordinance

Presenter:

John Speckman

**Department Head
Signature:**

for Bruce A. Smith