

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. 20-009

APPLICATION: Application of LKA 2, LLC, for an administrative review to place a primary farm dwelling on an 80.08 acre parcel in an EFU (Exclusive Farm Use) zone located in the 9800 block of Liberty Road S. Salem. (T9S; R3W; Section 3; tax lot 500).

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

PROCEDURE: The Marion County Zone Code provides that Adjustment 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 fee of \$200.00) 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 **April 23, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 24, 2020** unless appealed.

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

1. The subject property is designated Exclusive Forest Use 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.
2. The subject property is located on the east side of Liberty Rd SE approximately 400 feet north of its intersection with Lake Dr SE. According to the Marion County Tax Assessor, there are no improvements on the property.
3. Surrounding properties to the south and west are zoned AR (Acreage Residential) and consist of small rural residential lots developed with dwellings. Surrounding properties to the north and east are in various farm and residential uses and all zoned EFU.
4. The applicants are proposing to locate a primary farm dwelling to be occupied by the owner, owner's family member(s) involved in the farm operation, or a farm operation employee.
5. Soil Survey of Marion County Oregon indicates 98.7% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included in the land use decision:
 - A. In accordance with Marion County Code (MCC) 11.10, driveways must meet MCPW design standards. At the time of application for building permits an Access Permit will be required. There is an existing gated access in the apex of the road curvature along the adjacent west parcel (TL 093W0300400) leading to an apparent internal semi-improved drive to the subject property, as viewed on more recent aerial imagery. Evidence of an access easement will be required as a stipulation for Access Permit issuance. Otherwise, there is an unopened 20-

foot wide public right-of-way located to the north connecting to the subject property; a PW Engineering permit would be required to open it in order to establish access from that point.

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.

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

Marion County Building Inspection commented that a building permit would be required for new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that site evaluation is required.

All other contacted agencies either failed to comment or stated no objection to 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;

There is no existing dwelling on the subject property. This 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;

This is the only property owned by LKA2 LLC. The applicant submitted a letter from the applicant's accountant certifying that the farm operation grossed in excess of \$80,000 in each of calendar years 2019 and 2020 from acreage identified as tax identification number R36115. The income meets this criterion.

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

The property is currently undeveloped, except for an access road. In a telephone conversation with the applicant's representative, the farm operation was described to include purchase and sales of horses. The horses normally remain on the property they were purchased from until they can be delivered to the new buyer and often never come to the subject property. The applicant's representative stated that there are some occasions when horses are taken to the subject property; however there are no facilities on the property to house the horses or keep feed and hay. There does appear to be a well located on the property that was drilled in 2007 and identified as MARI 60273 that may be used to provide drinking water. It does not appear that the subject property is an integral component of the farm operation. It appears that the equine sales business is not dependent on the subject property to be viable. There is insufficient evidence that the subject property is currently employed for the farm use that produced the income. This criterion is not 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 stated that the proposed dwelling will be occupied by the owner, owner's family member(s) involved in the farm operation, or a farm operation employee. This criterion can be met.

8. Based on the above findings, it has been determined that the proposed primary dwelling does not satisfy all applicable criteria and is, **DENIED**.

Joe Fennimore
Director-Planning Division

Date: April 8, 2020

If you have any questions regarding this decision contact Lisa Milliman 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.