

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Level Two
Permit for a Home Occupation with Exceptions.

Case File No: Z0286-23-HOEX
(Wiberg)

A. SUMMARY

1. The Applicant is Christopher Wiberg. Ohana Group, LLC, an Oregon limited liability company of which Christopher Wiberg is the Manager, owns the subject property located at 25028 NE Airport Rd. Aurora, OR 97002 (the “Property”). The Property is an approximately 18-20 acre parcel within Clackamas County also known as T3S R1W Section 25 Tax Lots 0800 and 00804, a site approximately 650 feet south of the intersection of NE Airport Rd. and NE Miley Rd.
2. The Property is within the Rural Residential Farm Forest 5-Acre (RRFF-5) zoning district. The subject site is located outside the urban growth boundary and within the Rural Reserve to the south of Wilsonville. The Property is improved with a single-family residential structure (dwelling) and accessory structures.
3. The Applicant is requesting approval of a level two home occupation with exceptions. The application requests an exception to ZDO¹ 822.04(B), to allow 15 employees instead of the five that are normally associated with a level two home occupation, and an exception to ZDO 822.04(L)(1) to allow the use of 3000 square feet of the accessory building for office space storage rather than the 500 square feet allowed without an exception. Approval of this application would also require an exception to ZDO 822.04(L)(2) to allow at least 30 vehicle trips per day, rather than the maximum of 20 vehicle trips allowed without an exception, and an exception to ZDO 822.04(L)(3), to allow 15 cars to be parked on site, rather than the four that are normally associated with a level two home occupation,.
4. County staff reviewed the application, including additional submitted application materials, and submitted a staff report to the Hearings Officer recommending denial of the application, while also recommending a number of proposed conditions of approval and requirements to clarify certain parts of the proposal in the event it were approved.
5. On October 5, 2023, Hearings Officer Carl Cox (the “Hearings Officer”) conducted a public hearing to receive testimony and evidence in support of and in opposition to the Applicant’s proposal. The Hearings Officer denied the application.

B. APPLICATION

1. This application was received by the County on July 12, 2023, with the County issuing notice of incomplete application on July 31, 2023 with a list of missing information required for a

¹ Clackamas County Code, Title 1 Zoning and Development Ordinance.
Hearings Officer Final Order
Z0286-23-HOEX
Wiberg Home Occupation with Exceptions

complete application. The Applicant submitted additional application materials and the application was deemed complete by County staff on August 22, 2023. As the subject property is not located inside an urban growth boundary, the 150-day deadline for final action on the application pursuant to ORS 215.427(1) is January 19, 2024. On August 30, 2023, the County mailed notice of the scheduled October 5, 2023 public hearing on the application, providing the notice to interested agencies, Community Planning Organization(s) and owners of property within 2,640 feet of the subject Property.

2. In the completed application, the Applicant Christopher Wiberg describes two proposed home occupation businesses. The first: “Primary business is a management company involved in the day to day running of a small family-owned construction company. Primary activities are remote (cell phone/email) management and paperwork conducted on computers. Infrequent meetings conducted in a conference room setting.” The second: “Secondary business is a family owned construction company – this site will serve as an off-site storage facility for shipping and receiving of tools and equipment – including screw guns, lights, ladders, hand tools, toolboxes, saws, plastic sheeting.” The Applicant states he will be the operator of the home occupation, but will not reside full-time in a lawfully established dwelling on the Property, explaining: “Not currently, but they will prior to and during operation of the home occupation.” The application states the home occupation will have 15 employees, including the operator, that noise generated by the home occupation is limited to the use of a warehouse forklift operated between the hours of 08:00 am and 03:00 pm, Monday through Friday, and that noise will not exceed the greater of 60 dB(A) or the ambient noise level. The Applicant also stated that no hazardous materials will be stored on the Property.
3. With respect to compatibility of the proposed home occupation with the area, the Applicant addressed the factors requiring consideration in making this determination by pointing to: a) size of the Property at almost 20 acres; b) location of the Property at the intersection of Airport Rd NE and NE Miley Rd, in close proximity to Langdon Farms and their characteristic ‘farm’ buildings; and c) ample room for traffic on the public roads. The Applicant elaborates, noting the size of the Property provides ample room for employees and visitors to readily exit the road and park, reducing impact on area traffic. The Applicant further points out that the Property is largely undeveloped with large setbacks, with ample space for a living plant barrier to help mitigate any noise and to shield the home occupation from view from the public roadway and from surrounding properties. The Applicant reported that the Property has an existing large hay barn which can be renovated as office space, while maintaining the appearance of a hay barn. The Applicant asserted that the use would be as “flex” space, meaning not full time, and this would further reduce impact to the area. The Applicant further asserted that “No business activities engage in on this property generate a measurable environmental impact.” The Applicant points to the continued preservation of over four acres of oak forest and an existing wetlands running the width of the Property.
4. The Applicant addressed the availability and adequacy of services to serve the proposed home occupation, stating that the Property has two wells and preliminary testing indicates these wells are capable of providing more than enough fresh water for the proposed home occupation and associated business. The Applicant notes that public transportation services are not available, but states that the proposed business use of the Property is not open to the general public and should not generate foot traffic, with transportation available via public

roadways. The Applicant further states that they are installing a new septic system to serve the Property and the proposed home occupation businesses, designed by a County-approved licensed septic professional.

5. The submitted application includes a Pre-Application Conference Summary discussing the particular requirements of ZDO 822 for a level two home occupation, with several related comments submitted by County staff. The Pre-Application Conference Summary also states that the Property is not eligible for a level three home occupation with an exception because less than 50 percent of the lots of record abutting the subject property are larger than two acres. The application includes a site plan of the proposal that also shows adjacent properties, and includes attachments showing neighboring property sizes confirming that fewer than 50 percent of these lots are larger than two acres. The application also includes a floor plan for the proposed use of an existing accessory structure on the Property (referred to as the “Barn”), along with preliminary plans for remodeling this space and other supporting information, including an evaluation report by County staff stating that the site was found suitable for an onsite wastewater treatment system for a four bedroom single family residence and an office with a maximum of 15 employees.
6. The Applicant’s attorney, Sarah Mathenia, submitted a narrative letter concurrently with the application as supplementary material providing additional relevant information, background concerning the Applicant’s business operations and requested exceptions to the County’s level two home occupation, and discussion of the applicable standards. In her letter, Ms. Mathenia indicates that Mr. Wiberg will reside full-time in the established residence on the Property and is seeking approval of this land use application for a home occupation with exceptions to operate the management side of a family-owned construction company from the existing Barn accessory structure on the Property.
7. In her narrative letter submitted in support of this application, Ms. Mathenia asserts that the application demonstrates compliance with County ZDO requirements, and provides a summary reviewing Pre-Application Conference requirements. Ms. Mathenia addresses the Applicant’s proposed use of the Barn as a level two home occupation with exceptions, and discusses the ZDO standards for a level two home occupation and the two ZDO standards for which the Applicant requests exceptions. Specifically, exceptions to Sections 822.04(B) and 822.04(L)(1) of the ZDO. Respectively, the number of permitted employees (five, including the operator) and the square footage of floor space permitted to be used for level two home occupations (500 square feet).
8. Ms. Mathenia’s narrative letter refers to the Applicant’s estimate that between five and eight employees will be conducting administrative work in the Barn the majority of the time, while an exception is requested to allow a total of 15 employees in the Barn to accommodate occasional team meetings or overlapping of visits. Ms. Mathenia describes the requests as “a goal and a preference” and states that the request is for the County to grant the maximum it is willing to approve. Similarly, Ms. Mathenia points to the Applicant’s request for an exception permitting 1,372 square feet while stating that if the County is unwilling to approve the full 1,372 square feet, the Applicant will modify the interior of the Barn to accommodate the amount approved. Ms. Mathenia points to Section 822.05 of the ZDO (detailing requirements for Exceptions to home occupation standards) and asserts that the Applicant’s proposed use of

the Barn, and the Barn itself, can comply with these standards. Further, Ms. Mathenia contends that the proposed “use is compatible with the surrounding area, and its tasteful design with a barn aesthetic is in keeping with the surrounding neighborhood.”

9. In her narrative letter, Ms. Mathenia notes that the Property is located at the intersection of NE Miley Road and Airport Road NE, with NE Miley Road classified by the County as a “Collector” street defined as a “principal carrier within neighborhoods or single land use areas. Links neighborhoods with major activity centers, other neighborhoods, and arterials. Generally not for through traffic. Low to moderate volume; low to moderate speed.” Ms. Mathenia notes that Airport Road NE is classified as a “Major Arterial” street, described by the County as a street that “carries local and through traffic to and from destinations outside local communities and connects cities and rural centers. Moderate to heavy volume; moderate to high speed.” Ms. Mathenia asserts that the vast majority of the Applicant’s employees will travel along Airport Road NE, describing the traffic generated by these employees as “approximately 10-20 trips per day” and contending that this additional traffic “will not create a burden for either a Collector or a Major Arterial Street as both street designations are intended for moderate to heavy traffic. Moreover, the employees’ work hours are offset from traditional peak travel times and, with the majority arriving between 6:00 a.m. and 7:00 a.m. and departing by 3:30 p.m., the home occupation will add very little to volume at peak travel times.”
10. In the narrative letter, Ms. Mathenia states that the Applicant’s proposed home occupation will not require outside storage and asserts that the business will produce minimal noise as the Barn will be used only for storage and administrative work related to the construction business. Ms. Mathenia points to Section 822.05(B) requirements for adequate services for the proposed use, including transportation and sewage disposal. Ms. Mathenia reports that on June 1, 2023 a licensed professional visited the Property and confirmed that a new septic system is feasible on the Property. Ms. Mathenia reports related discussion of these topics from an April 4, 2023 Pre-Application Conference, with other requirements and additional conditions, and the status of meeting these requirements.
11. Ms. Mathenia closes her narrative letter by asserting that the application complies with and meets all but two of the standards and criteria in the ZDO for a level two home occupation, is requesting only minor exceptions to those two standards, and is meeting the standards and criteria discussed at the Pre-Application Conference. Ms. Mathenia describes Ohana Group, LLC as a good neighbor, a productive business, and compliant member of the community.

C. PRE-HEARING PUBLIC COMMENTS

1. Kenneth Kent, County Development Engineering, submitted written comments in advance of the public hearing in this matter concerning review of this application by Development Engineering staff. Among other things, Mr. Kent reported that NE Airport Road is improved to a width of 28 feet and is adequate to serve the proposed home occupation. Mr. Kent noted that the Property has an existing driveway, but a second access was added between 2018 and 2020 in the vicinity of the Barn structure without a permit, and one of these accesses requires removal. Mr. Kent submitted a number of proposed conditions of approval, including removal of the second access, and frontage and on-site improvements.

2. The County received written comments from the City of Wilsonville, submitted by Daniel Pauly, AICP, the City's Planning Manager, opposing this application. The City states that it has an interest in this decision pursuant to the Urban Growth Management Agreement (UGMA) as this Property is within the agreed-upon Dual Interest Area. The City points to its position strongly opposing attempts to industrialize land in the French Prairie, including other properties along Airport Road. The City states that it supports enforcement of existing County standards to stop industrial/contractor's establishment operations on this land, use of properties consistent with County zoning, and enforcement of regulations concerning which properties should urbanize and which remain rural in nature. The City of Wilsonville submits several arguments in support of its position that this application should be denied, including:
- Maintaining the rural nature of adjacent land consistent with County zoning and urban and rural reserve designations. Here, the City points to its concern about the attempt to operate a contractor's establishment on the southern edge of the City in an area that is rural, agricultural, and residential in nature, and is in a rural reserve, citing "their character-changing, industrial look, stormwater and other environmental impacts, and traffic generation...".
 - The City points to the use of the Property "in violation of County code for some time now." Further, the City asserts that the use is "counter and incongruent with the character of the surrounding area." The City argues that "the application proposes an urban use on rural land under the guise of a home occupation." The City contends that approval of this use requires a Goal 14 exception, citing the Oregon Supreme Court's *Curry County* factors.² Further, the City asserts that a Goal 14 exception is prohibited by OAR 660-027-0070(3) because the site is located within the rural reserve, and none of the exceptions apply. The City points out that the Property is zoned RRFF-5, an existing exception area, asserting that a comprehensive plan amendment is required to increase the intensity of uses allowed.
 - The City points to the County's ZDO, noting that the home occupation provisions allow for incidental and minor uses associated with a residence. The City contends that this application "is above and beyond a typical home occupation with reasonable accommodation through the exception process." The City argues here that the exception criterion in County ZDO 822.05(A)(b) "is not met because the character of this neighborhood is rural residential consistent with the zoning." The City points out that there are no nearby construction or other business with 15 employees, and the adjacent properties are developed with residential dwellings.
 - The City makes an argument that the criterion in County ZDO 822.05(A)(d) is not met "because the additional sewage will adversely impact water quality."
 - The City points to County ZDO 822.05(C)'s restriction prohibiting an exception to County ZDO 822.04(J), requiring that a home occupation be operated "substantially in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district." The City contends that "It is not normal for RRFF-5 properties to have buildings with 15 employees, and there is no evidence in the record to demonstrate otherwise." The City points out that this RRFF-5 zoned area is developed with rural residential uses, including accessory structures limited to residential outbuildings such as garages. The City points to the following aerial Goggle Earth before/after purchase

² See 1000 Friends of Oregon v. LCDC (1986 Curry County), 301 Or 447.
Hearings Officer Final Order
Z0286-23-HOEX
Wiberg Home Occupation with Exceptions

photos showing that the Barn on this Property is vastly larger than any other nearby accessory structures.



- The City points out that the proposal site is not eligible for a Level Three Home Occupation due to the fact that a majority of neighboring properties are less than two acres. The City further points out that this application for a Level Two Home Occupation also does not fit within limits for a larger Level Three Home Occupation.
 - The City further points out that the application lacks a traffic study or information to show that the proposed Level Two Home Occupation would not generate more than 20 vehicle trips per day (a reference to County ZDO 822.04(L)(2) Traffic). The City points out that the Applicant has not requested an exception to this standard, or requested an exception to the standard for the number of vehicles parked (a reference to County ZDO 822.04(L)(3) Vehicles, limiting a level two home occupation to four vehicles at any time).
 - Finally, the City contends that there is no reasonable land use path to legalize the Applicant’s use, “in consideration of the size and scale of the use and related traffic impacts, sewer and environmental impacts, and most importantly incompatibility with the surrounding rural and residential land uses in a rural reserve.”
3. The Charbonneau Board of Directors, President Anne Shevlin, the Charbonneau Country Club Homeowner’s Association, and its General Manager Jim Meierotto, submitted written comments on behalf of these organizations, in opposition to this proposal. Ms. Shevlin and Mr. Meierotto contend that the application should be denied for several reasons, including:
- “[The County] should reject this application as an industrial use that should not be allowed to operate on a property zoned RRF-5.”
 - Asserting that “non-compliant activities have been going on for more than five years, since shortly after the current owner purchased the property on July 31, 2028.”
 - Employees: the comments point out that the requested exception for 15 employees is three times the limit for either a Level Two or Level Three Home Occupation.

- Building Floor Space: the comments point out that the requested exception for 1,500 square feet of accessory building floor space is three times the limit for either a Level Two or Level Three Home Occupation.
 - Operator: the comments point out that the requirement is for the operator to reside full-time on the site, asserting that the Property is not the owner’s primary residence. The comments assert that five years have passed since the owner purchased the Property, yet the Property is not in a livable condition.
 - Noise: the comments contend that employees arrive on site at 6:00 a.m. and this is when noise complaints start, describing it as “a consistent problem.”
 - Storage and Display: the comments included “before and after” Google Earth photos of the Property pointing out that a significant amount of material is stored outside, including what appears liquid/chemical containers.
 - Traffic: the comments point out that a Level Two home occupation must not generate more than 20 vehicle trips per day. The comments assert that a business with 15 employees that come and go to job sites from the Property will exceed this restriction. The comments also assert the use causes congestion on local roads.
 - Maximum Vehicles: The comments point out that the maximum number of vehicles that can be associated with a Level Two Home Occupation is four at any time, including employee and customer vehicles. The comments contend that, with 15 employees, the number of vehicles on the Property will consistently exceed this standard.
 - Compatibility with Area: the comments contend that the Applicant is seeking to change the use of the Property from a rural residential use to an industrial or commercial use.
4. The County also received numerous written comments from members of the public in advance of this hearing, primarily from nearby residents submitting comments opposed to the Applicant’s proposal. These comments included:
- Comments from Kelly and Kery White. Mr. and Ms. White reside on Lawnview Circle, oppose this application, and submitted a written statement asserting that the property should be restored to rural residential use and “the premises should be cleared of all commercial machinery, vehicles, storage containers, and other such commercial equipment.”
 - Comments from Mary Gionta. Ms. Gionta resides on NE Airport Rd. and states that she purchased her property adjacent to the proposal site in July 2017. She describes making numerous complaints to Clackamas County about the noise from the Applicant’s activities on the Property for years, asserting that the Applicant’s business was operating full-time from the Property, with employees on the Property, a “multitude of trucks in and out of the property, working 7 days a week, sometimes through the night,” as well as the smell of chemicals and noise from operating heavy equipment. Ms. Gionta states that two months before receiving notice of this hearing, she and her husband sold their home “well below the valuation so we could move on and have some peace in our lives.”
 - Comments from Michael Farmer. Mr. Farmer resides on Prairie View Dr. and also submitted a written comment in opposition to this application.
 - The County received written comments from Susan and Russ Alvarez. Mr. and Ms. Alvarez reside on NE Prairie View Dr., oppose this application, and make several contentions, including asserting that the additional traffic on Airport Road from a commercial business would negatively impact traffic and potentially impede emergency vehicles.

- The County received written comments from Pat Kenney-Moore. Ms. Kenney-Moore resides on NE Prairie View Dr., opposes this application, and made several contentions concerning noise, and references to ignoring building codes and zoning ordinances in operating from the Property “a large commercial construction business.”
- The County received written comments from Stephen R. Sander. Mr. Sander resides on NE Prairie View Dr., opposes this application, and made several contentions concerning traffic impacts from employees commuting to and from the site, loud noise from operations, strong diesel fumes, and references to ignoring building codes and zoning ordinances.
- The County received written comments from Kathy Miller. Ms. Miller resides on SW Middle Greens Rd. in Wilsonville, opposes this application, and made several statements concerning the appearance of the Property describing it as an industrial site, and asserting: “[The owner’s] activities and plans for further expansion are disrupting the rural livability of the area.”
- The County received written comments from Burville and Sandra Wenke. Mr. and Ms. Alvarez reside on SW Lafayette Way in Wilsonville and oppose this application, reporting driving by the proposal site “several times a week.” The Alvarezes question whether the owner lives on the Property, describing the Property as an eyesore. They contend that no change to the allowed uses for RRFF-5 zone property should be allowed, the two exceptions (limits for employees and building floor space) should be denied, and the application not approved.
- The County received written comments from Deb and Bob Barnes. Mr. and Ms. Barnes reside about 400 feet south of the Property. They point out that the Property is zoned RRFF-5 and contend that the proposal is to continue the current commercial/industrial use of the Property. Mr. and Ms. Barnes report that the traffic in and out of the Property “is busy and continues to increase.” They point to the Applicant’s installation of a second access driveway, implying this was done to accommodate this increased traffic. Mr. and Ms. Barnes state that: “Traffic includes numerous trips by employee vehicles, box trucks and even semi-trucks coming & going throughout the day. There are times the semi-trucks actually block traffic on NE Airport Rd.” They also point to an accumulation of items outside, referencing before/after Google Earth photos, and state that: “The ground in this area is some of the best farmland of the Willamette Valley. For this property to be allowed to be used as a Commercial-Industrial site is astonishing.” Mr. and Ms. Barnes also make additional comments concerning the overgrown condition of the Property impacting visibility along adjacent roads and providing habitat for coyotes.
- The County received written comments from BettyAnn Arrasmith. Ms. Arrasmith resides on NE Mulligan Ct., one lot away from the proposal site, opposes this application, and makes several statements supporting her argument that the Applicant’s proposal should not be approved. Ms. Arrasmith reports that there is “constant heavy machinery and construction noise coming from [the Property] that is very disruptive of rural life. Loud noise comes from [the Property] at all times of the day – early morning to late evenings. It was especially bad during construction of the barn extensions – multiple extensions.” Ms. Arrasmith also reports that the house doesn’t appear inhabited, and describes issues with semi-trucks coming to the Property.
- The County received written comments from Dave and Elizabeth Kenney. Mr. and Ms. Kenney reside on Lawnview Circle, oppose this application, and make several arguments contending that the Applicant’s proposal should not be approved. The Kenneys contend

that: the owners are not living on the property; they do not have an existing certified septic system; they have built structures without the proper permits or inspections; they have 15 employees; they have generated numerous complaints of noise as early as 6:00 a.m.; their barn addition use far exceeds limits for accessory building floor space limits; their daily vehicle trips often exceed 20.

- The County received written comments from Bonnie and Lloyd Johnson. Mr. and Ms. Johnson reside on NE Prairie View Ct., oppose this application, and also make several arguments contending that the Applicant's proposal should not be approved. The Johnsons contend that: there is no residential occupation of the Property; the "barn" is actually a modern, fully furnished and staffed office complex; numerous cars, trucks, shipping containers, and RVs are parked on the premises, beyond the number of vehicles the zoning allows for a personal business; approval of the application will result in increased traffic congestion and accidents.
- The County received written comments from David and Lori McKinney. Mr. and Ms. McKinney reside on SW Honor Loop, within the Charbonneau District of Wilsonville, oppose this application, and also make several arguments contending that the Applicant's proposal should not be approved. The McKinneys contend that: the application does not accurately describe the actual level of activity on the Property; the use of the Property by the Applicant is industrial/commercial; the Miley Road/Airport Road intersection adjacent to the Charbonneau I-5 ramp is already often congested; the number of employees, number of vehicles, and vehicle trips associated with this application exceed home occupation standards.
- The County received written comments from Ashley Larson. Ms. Larson resides on NE Lawnview Circle, opposes this application, and makes several statements supporting her argument that the Applicant's proposal should not be approved. Ms. Larson questions the Applicant's intention to make the Property their residence, pointing out that it has been five years since this property was purchased and asserting that the only work that has taken place was expansion of the barn and starting operating their business from this site. Ms. Larson contends the Applicant purchased the Property to run an already established business there without the higher cost of property zoned for this type and size of business. Ms. Larson describes additional concerns with area property values, traffic patterns, noise levels, safety, and the loss of the peaceful environment they enjoy.
- The County received written comments from Andrew and Veronica Tschirhart. Mr. and Ms. Tschirhart reside on NE Mulligan Ct., oppose this application, and join in the statements by their CPO's letter that "the activities of the Applicant's business are consistent with commercial property, not with residential property...". The Tschirharts also discuss the effects to the character of their neighborhood by the Applicant's activities. The Tschirharts describe how instead of seeing sheep and farm animals from their backyard roaming the Applicant's Property, they now see "numerous vehicles, temporary buildings in various states of completion, and other debris." The Tschirharts are also particularly concerned with the amount of people that would come and go on the subject property were the application approved, asserting safety issues.
- The County received written comments from Ginger Bennett and Tom Guyette. Ms. Bennett and Mr. Guyette reside on NE Prairie View Dr., oppose this application, and argue that: "the requested waivers are not small & should be denied." Ms. Bennett and Mr. Guyette assert that the current business operation exceeds these requested waivers, reporting there are large numbers of vehicles, heavy equipment, multiple dropboxes,

storage containers, and piles of construction miscellaneous. Ms. Bennett and Mr. Guyette also assert that the owners have not lived on the property since purchasing it, noting that at that time the home was “a total fix & in need of a new septic system.” Ms. Bennett and Mr. Guyette submitted a photo showing the appearance of the barn at the time the property was sold, showing the front of a hay barn with a hay loft, two open windows., and two large doors, with what appears a covered carport or storage area adjacent to one side and a small single-story residential or accessory structure near the other side.

- The County received written comments from Scott and Joanne Wilson. Mr. and Ms. Wilson reside on NE Prairie View Dr., oppose this application, and state: “We live directly behind the property and can see shipping containers, vehicles and piles of debris.’ They describe the noise from the Property as “not normal home maintenance noise.” They also describe the Barn on the Property as: “a fully furnished and decorated office building inside of a so-called barn.” oppose this application, and make several contentions, including asserting that the additional traffic on Airport Road from a commercial business would negatively impact traffic and potentially impede emergency vehicles.

5. The County received written comments from David and Teresa Gellos. Mr. and Ms. Gellos reside on Lawnview Circle, oppose this application, and make several arguments contending that the Applicant’s proposal should not be approved.

- The Gellos contend that the application does not meet the definition of “incidental use” stated in ZDO 822.02(D).
- The Gellos point to the requirements of ZDO 822.04(B) and note that 15 employees represents a 300% increase over the stated limit of five employees for a home occupation, further pointing to the description of occasional “Team Meetings” as implying all employees will arrive and depart at the same time.
- The Gellos point to the requirements of ZDO 822.04(F) Storage and Display, stating that: “The current condition of the property demonstrates the Applicant has a disregard for neighboring residential properties as evidenced by storage of many materials and goods randomly strewn about the site and visible from outside the enclosed building space. Here, the Gellos also argue that “The current condition of the site does not meet neighborhood compatibility criteria under rural residential norms...”.
- The Gellos point to the requirements of ZDO 822.04(L)(3) Vehicles, noting that the Applicant states he will have 15 employees arriving and departing from the site, a 300% increase over the ZDO limit of 5 vehicles for a home occupation at any given time. Further, the Gellos point out that this number does not include the arrival and departure of customer or delivery vehicles related to the business.
- The Gellos point to the application’s floor plan (Sheet A1) and assert that the proposal is “to operate a substantial commercial business in violation of Rural Residential Zoning criteria and the limits set forth for Home Occupations as noted in [ZDO Section 822].”
- The Gellos assert that area traffic often uses Airport Road to avoid congestion on I-5, that the intersection of Airport Road and NE Miley Road is subject to frequent collisions, and question whether the Applicant’s proposed curb cut access point provides for clear line-of-site vision when departing the site, pointing to dense landscape vegetation and the crown of the road.
- The Gellos point out that, although the Applicant has requested two Home Occupation Exceptions, the Applicant’s proposal requires additional Exceptions, and should be rejected.

6. The Aurora Butteville Barlow Community Planning Organization (“CPO”) Chair Ken Ivey submitted written comments on behalf of the members of the CPO in opposition to this proposal, contending that the application should be denied for several reasons, including:
 - “Ohana Group LLC [is] an industrial operation that exceeded the limitations of a Home Occupation before they purchased the Airport Road property.”
 - The operator does not reside on the Property. Mr. Ivey points out that the Property is not the owner’s primary residence, asserting the property is not in a livable condition after five years of ownership.
 - The Applicant has requested only two exceptions to qualify as a Level Two Home Occupation, however: “They would need far more than two exceptions and those are significant.”
 - ZDO 822.04(A) Employees: the number of employees is 3 times the limit of five employees.
 - ZDO 822.04(L)(1) Building Floor Space: Mr. Ivey contends that the Applicant expects to use 3,500 square feet of the Barn, more than seven times the limit of 500 square feet for a Level Two Home Occupation.
 - ZDO 822.04(C) Noise. Mr. Ivey points to the application stating that employees arrive at 6:00 a.m. whereas the ZDO regulates noise from 8:00 a.m. to 6:00 p.m.
 - ZDO 822.04(F) Storage and Display. Mr. Ivey references this section’s prohibition on outside storage and other external evidence of a home occupation, except as specifically allowed. Mr. Ivey points to before/after Google Earth photos of the Property as evidence of a significant amount of outside storage of materials, providing copies of these photos.
 - ZDO 822.04(L)(2) Traffic. Mr. Ivey points to the limitation for a Level Two Major Home Occupation of no more than 20 vehicle trips per day, and the application’s forwarding letter estimating 10-20 trips per day. Mr. Ivey disputes this estimate, pointing to the business having 15 employees and asserting that these employees come to the Property, then go to job sites and return, contending it is impossible for the Applicant to limit trips to fewer than 20.
 - ZDO 822.04(L)(3) Vehicles. Mr. Ivey notes this section’s limit for a Level Two Major Home Occupation of no more than four vehicles at any time. Mr. Ivey points to the Applicant’s requested exception for 15 vehicles, asserting this is evidence that the Applicant is operating an industrial business from the Property, further stating: “It requires waivers for almost every requirement. As it grows, what waiver will be need in the future.”
 - Mr. Ivey contends that the Applicant has purchased this “agricultural/residential property to avoid the cost of industrial land properly situated in an urban setting.” Mr. Ivey contends the owner has ignored County regulations and the impact on the surrounding community.
 - Mr. Ivey asserts that “the exceptions requested and those they did not request are too broad and too significant to be allowed.” He asserts approval would turn this property into an industrial property within a Rural Reserve, violating County goals.
7. The County received additional, supplementary written comments from Mr. Ken Ivey, Chair of the Aurora Butteville Barlow CPO in opposition to this proposal. Mr. Ivey contends that because ZDO 822.05 Exceptions requires review as a Type III application, and ZDO

822.04(L)³ requires that “A level three major home occupation may be established only if at least 50 percent of the lots of record abutting the subject property are larger than two acres” the proposal should be denied. Mr. Ivey provided a list of the 13 properties abutting the subject Property, showing that all of these abutting properties are smaller than two acres and range in size from 0.47 acres to 1.11 acres. Mr. Ivey also points to the application’s description of the Barn, asserting that the Barn significantly exceeds 6,000 square feet, and pointing out that areas not included in the Applicant’s total include the shower, the bathroom, a repair shop, and one or more storage areas. Mr. Ivey asserts that “the barn is fully absorbed by the business and significantly exceeds the square footage waiver required by the applicant, which significantly exceeds the 1,500 square foot limit on a Level III Home Occupation.” Mr. Ivey contends that the two requested exceptions do not meet the many restrictions the business can’t meet, and that “the business and industrial level of activity are not compatible with the surrounding community, far exceeding anything allowable on RRFF-5.” Mr. Ivey again refers to the Applicant as not living on the Property, contending the Applicant is only offering a promise to move onto the Property at some future date. Mr. Ivey contends that the Applicant’s operations on the Property “have negatively impacted the quality of life of those around them and hurt the value of properties in our community.”

8. The County received written comments from John and Sheree Clemson. Mr. and Ms. Clemson reside on NE Prairie View Drive, oppose this application, and make several contentions, including:
 - No one has ever lived on the Property while operating this business.
 - The existing single family residence is in poor condition with one of the upper levels currently open to the elements. The Clemsons report that this can be seen from Airport Road, and contend that “this older structure would take some time and effort to fix up.”
 - The use of the Barn and Property will include storage of the business equipment, use of the “repair shop” and other areas, asserting that the business has equipment that must be repaired, maintained, and stored.
 - The business currently has outside storage of materials and other construction business related equipment.
 - The Clemsons state: “Their property consists of the barn, a dilapidated single family dwelling, and an overgrown and unsightly vineyard with a falling down fence surrounding the property. No attempt has been taken to beautify or maintain any of these areas. It negates the maintained boundary of the Charbonneau community and surrounding neighborhoods.”

9. The County received written comments from David and Melissa Bussey. Mr. and Ms. Bussey reside on NE Mulligan Court, oppose this application, and make several contentions, including:
 - Their backyard abuts the subject property, and “faces the back side of the Warehouse/Office Structure which is very close to our property line replacing the beautiful old barn that was there previously.”
 - They “endured the next couple of years of construction noise, often early, late and on weekends coming from the Wiberg parcel behind us..”.

³ Mr. Ivey mistakenly refers to the ZDO as “522.04(L)” whereas I believe he refers to ZDO 822.04.L. Regardless, I disagree with Mr. Ivey’s interpretation.

- Reporting observing “quite a few cars and trucks, construction equipment and large attachments, storage bins and other construction items located outside. On the inside [of the Barn] there was a fully working warehouse with several employees all wearing IES Construction T-shirts and what appeared to be offices behind them.”
 - Reporting often hearing vehicles and equipment moving around and other business-related noise, stating: “Sometimes we hear back up sirens and other loud noises starting as early as 6:00 or 7:00 am.”
 - The Busseys provided a list of other concerns, including:
 - Protection of residential quality of life
 - Absentee owner, asserting the owner does not reside on the Property and is unlikely to.
 - Operation Size, citing the building size and number of employees.
 - Noise, asserting “The level of business-related Noise coming from this operation is unacceptable and materially affects our ability to enjoy our home and back yard.”
 - Traffic and vehicles, expressing concerns about increased traffic.
 - Property values, expressing concerns over reduced home values.
 - Future exceptions and waivers, expressing concerns with respect to other business operations in their residential area, and expansion of the Wiberg’s business.
 - On October 5, 2023, Ms. Bussey submitted additional comments shortly following the hearing in this matter. Ms. Bussey makes several additional comments, and arguments opposing this application, including:
 - That the second access driveway added to the Property needs to be removed.
 - That the size and scope of this operation is not within what is allowable as a Home Occupation with Exceptions.
 - Approving the application will set a precedent for other such businesses.
 - Questioning how enforcement or compliance with zoning requirements will occur.
 - Asserting that the principal of the owner of the Property (Ohana Group, LLC) must reside on the Property as the Operator, or the application cannot be approved.
10. The County received written comments from Kristin Sare. Ms. Sare resides on NE Lawnview Cir., opposes this application, and makes several contentions, including:
- Noise and disruption, contending businesses “with regular vehicle traffic tend to generate noise and disrupt the peaceful ambiance of a residential neighborhood.”
 - Traffic congestion, asserting businesses often bring increased traffic and congestion, Airport Road is already heavily used, and the increased number of box trucks going in and out of the proposal site will make it worse.
 - Property values, asserting a “detrimental effect on property values.”
 - Zoning regulations, contending that existing zoning regulations “were put in place to ensure that our community maintains its residential character.”
 - Safety concerns, pointing to possible increased fire risks, chemical storage, and other potential hazards.
11. The County received written comments from Richard McLeod. Mr. McLeod is a homeowner in the adjacent Charbonneau District of Wilsonville, opposes this application, and makes several arguments and contentions, including:
- The application is for an industrial use that should not be allowed on RRFF-5 zone property.

- Asserting that “allowance of non-compliant activities changes the nature of the surrounding residential and rural residential neighborhoods.”
- The owner does not live on the Property.
- The requested exceptions are significant and the application should be denied because:
 - ZDO 822.04 Employees. Mr. McLeod points out that the requested exception is three times the limit for either a Level Two or Level Three Home Occupation.
 - ZDO 822.04.L.1. Building Floor Space: Mr. McLeod points out that the requested exception is three times the maximum for Level Two and approaches the limit for a Level Three Home Occupation.
 - ZDO 822.04.A. Operator. Mr. McLeod states that the Property is not the owner’s primary residence. Mr. McLeod points out that five years have passed since taking ownership, but the owner has not made the Property livable.
 - ZDO 822.04.F. Storage and Display: Mr. McLeod points to Google Earth photos of the Property showing that “a significant amount of material is stored outside, including what appear to be liquid/chemical containers...”.
 - ZDO 822.04.L.3.A. Vehicles: Mr. McLeod points out that the maximum number of vehicles associated with a Level Two Home Occupation and located on the subject property shall not exceed four at any given time, yet this business has 15 employees. Mr. McLeod contends that the number of vehicles on site consistently exceeds the ZDO standard and is consistent with industrial use.

D. PUBLIC HEARING, ADDITIONAL SUBMISSIONS, AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the October 5, 2023 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any bias, or conflicts of interest, and disclosed receiving *ex parte* contact in this matter. Specifically, the Hearings Officer disclosed that he acted in the capacity of Clackamas County Compliance Hearings Officer in a code compliance matter concerning the Property, the Applicant, and the owner of the Property. In that matter, the Hearings Officer issued a continuing order to abate certain County code and ZDO violations on the Property that include the activities for which Applicant is seeking land use approval, and discussed the existence of this ongoing code enforcement matter with County Planning staff and the procedure for disclosing it. The Hearings Officer asked if there were objections to his acting as Hearings Officer with respect to this application, and there were no objections. The Hearings Officer stated that the only relevant criteria in the current proceeding were those identified in the County’s staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, County Planner Joy Fields shared a PowerPoint presentation and described the application and supplemental materials submitted by the Applicant in support of this proposal for a Level Two Home Occupation with Exceptions. Ms. Fields described the proposal, noting the operation’s use of approximately 3,000 square feet of an existing two-story renovated hay barn with an approximate footprint of 80’ x 64 ‘ as offices and storage for parts

and tools related to a construction business. Ms. Fields described the two requested exceptions: an exception to ZDO Subsection 822.04(B) to allow 15 employees, instead of the limit of 5, and an exception to ZDO Subsection 822.04(L)(1) to allow use of up to 3,000 sq. ft. of a detached accessory structure, instead of the limit of 500 sq. ft. Ms. Fields provided a slide and discussion of her review of this application, noting that approval of this application would require additional exceptions, including: an exception to ZDO 822.04(L)(2) to allow more than 20 vehicle trips per day, and an exception to ZDO 822.04(L)(3) to allow more than four vehicles at any time and potentially more than one delivery per day.

3. Ms. Fields shared a slide showing the vicinity of the Property, located in an area of RRFF-5 zoning adjacent to Wilsonville at the intersections of NE Airport Rd. and NE Miley Rd. near I-5. Ms. Fields showed an aerial view of the Property depicting property lines with abutting parcels. This photo also shows a single-family residential structure and accessory structures on the Property, a large number of vehicles, storage containers, and miscellaneous items stored out in the open. Ms. Fields shared a slide with more detailed information showing that all of the developed structures on the Property are located on tax lot 00800, showing the locations of the residence (built in 1963 with a permit for renovations issued in 2023), a Hay Barn with an approximate footprint of 80' x 64' with a 2nd story, renovated through permit B0413120, the location of a well, and the location of a new, second access driveway from the Property onto NE Airport Rd. Ms. Fields also explained that one of the two access driveways to the Property needs to be removed to meet County driveway spacing standards.
4. Ms. Fields shared a slide of additional site logistics, showing the legal description of the Property (31W25 00800 and 00804), zoned RRFF-5, with acreage between 18-20 acres. Ms. Fields pointed to overlays showing a River and Stream Conservation Area on Tax Lot 800 (mostly on Tax Lot 804) more than 450 feet from the location of the proposed use. Ms. Fields discussed that building permit B0413120 allowed for a gas line, and permit B0231320 was for renovation of the Barn and is expired. Ms. Fields explained that if the application is approved, then a change of use for the Barn will be required in addition to obtaining final approved inspections for building permit B0413120, which has expired without final approved inspections. Ms. Fields pointed to County Roadway Standards Table 2-2 in discussing why the second access driveway needs decommissioning.
5. Ms. Fields discussed requirements for providing notice of this land use hearing, with the County sending notice to 760 property owners and receiving 25 written comments opposed to the application.⁴ The County also provided notice to the local Aurora Butteville Barlow CPO, County Divisions, and interested Agencies. The County received comments from the Aurora Butteville Barlow CPO opposed to the application, and from the County Septic and Onsite Wastewater Program indicating the site was evaluated and could support a system sized for a 4 bedroom home and use by 15 employees. The County's Engineering Division also submitted comments that a Development permit and decommissioning of one of the access driveways was required. The City of Wilsonville also submitted comments opposing this application, asserting the proposal is incompatible with the Rural Reserve and surrounding area due to traffic, sewer, and environmental concerns.

⁴ The County received additional written comments after Ms. Fields prepared her PowerPoint. All of the comments received were reviewed and considered..

6. Ms. Fields provided a slide and discussion of the various ZDO Subsection 822.04 requirements for a Level Two Major Home Occupation, reviewing requirements and findings for each Subsection 822.04(A) through 822.04(L)(4) respectively. Ms. Fields noted that a Home Occupation is an allowed use within the RRFF-5 zone. Ms. Fields explained that a Level Three Home Occupation may be established only if at least a majority of the abutting lots of record are larger than two acres, but that is not the case here and therefore based on the location the site could only qualify for a Level Two Home Occupation.
7. Ms. Fields also provided a slide and discussion of ZDO Subsection 822.05 Exception Criterion, discussing requirements under Subsection 822.05(A) that the proposed use remain compatible with the area, and the factors to consider when determining if a use is compatible with the area. Specifically, Ms. Fields referred to the factors: limiting the number of exceptions to demonstrate compatibility (asserting that four is a lot of exceptions); not to disrupt the character of the neighborhood, considering development/traffic/compatible structure size, and noise levels (stating that a traffic study may be an appropriate condition of approval); mitigation of impacts by driveway and road improvements, landscaping, building locations and designs, and other improvements; and potential environmental impacts such as air and water quality. Ms. Fields pointed to requirements under ZDO Subsection 822.05(B) to address services, public facilities (public water, surface water, sewer, and road improvements). Ms. Fields also provided a slide and discussion of ZDO Subsection 822.05 Exception Criterion, noting that exceptions cannot be made to requirements concerning the owner, shared access, compatible buildings in AGF, EFU, TBR Districts, and certain prohibited uses. Ms. Fields also pointed out that even with an exception, use of accessory building floor space may not exceed 3,000 square feet and requires separation from other areas by “a partition wall at least seven feet in height.”
8. Ms. Fields shared a slide and discussion of the floor plan for the Barn, with red areas delineating the areas the Applicant has indicated will be used. Ms. Fields pointed out that these areas are located in separate areas of the accessory structure and will require uses of the spaces in between to access them, such as a hallway area to access the front door. Ms. Fields explained that the code requires a minimum 7 foot separate wall, which would make these office areas inaccessible or require doors to the outside. Ms. Fields also pointed to areas on the second floor also inaccessible without passing through other areas, stating she sees no way the Applicant can separate the areas of use on the second floor from other areas. Ms. Fields referred to additional review discussion in the Staff report pointing to findings that although the Applicant requested two exceptions, at least four exceptions to the criteria are required to approve this application. Ms. Fields pointed to additional required exceptions, including: the number of vehicles on the Property and the traffic/number of vehicle trips generated by the proposal. Ms. Fields also discussed issues with the application, including the lack of separation of accessory building floor space for the home occupation from other areas, a lack of compatibility of the proposed home occupation with the rural residential area, and concerns with compatibility with the character of the neighborhood. Ms. Fields recommended denial of the application.
9. The Applicant’s attorney, Sarah Mathenia, explained that the Property was already in disrepair when her client’s family purchased it in 2018. Ms. Mathenia further noted that the

Covid pandemic abruptly and significantly impacted her client's business, leaving them just trying to stay afloat. Ms. Mathenia recounted when she was first retained by Ted Wiberg (Applicant's father) in the fall of 2022, and then by the Applicant Christopher Wiberg. Ms. Mathenia describes working with Christopher Wiberg and Anthony Rigoni of Ohana Group, LLC describing them as communicative and responsive.

10. Ms. Mathenia addressed an argument made by the City of Wilsonville concerning whether a Goal 14 Exception is required in order to approve this application. Ms. Mathenia provided some background concerning the meaning of a Goal 14 Exception, noting that the Oregon Land Conservation and Development Commission (LCDC) is a State agency tasked with establishing goals for growth and development, implemented by local agencies such as Clackamas County. Ms. Mathenia explained that Goal 14 Exceptions are required for things like an entire change in zoning, or bringing urban level services to rural areas, such as establishing a subdivision within a rural or forest zone. Ms. Mathenia pointed out that, as stated by Ms. Fields, a Home Occupation is an allowed use on RRFF-5 zone property requiring permitting within the guidelines, but not requiring a Goal 14 Exception.
11. Ms. Mathenia addressed Ms. Fields' assertion that the four Home Occupation exceptions required to approve this application is a lot of exceptions, contending that there are 15-20 subsections in the Home Occupation standards and criteria for which the Applicant could request an exception. Ms. Mathenia points to the four exceptions required to approve this application, characterizing them as less significant and not as disruptive to the neighborhood as an exception, for example, to the noise criteria, or to run bulldozers, or use hazardous substances. Ms. Mathenia points to the actual exceptions requested, things such as number of cars coming in and out, number of employees accessing the site, and number of vehicles on the site. Ms. Mathenia again points out that the Applicant is not requesting an exception to the noise criteria, a concern for the neighbors, and proposes imposing conditions of approval as opposed to an outright denial, further stating that the Applicant is willing to cooperate and modify operations.
12. Ms. Mathenia discussed the issue of noise, noting that many neighbors have complained about noise. She points out that the sounds of mowers coming from the golf club and the noise from semi-trucks on Airport Road already cause quite a bit of noise and disruption in the area. Ms. Mathenia describes a visit she made to the Property intentionally at rush hour, finding the area quiet and without congestion on the roads during her visit. Ms. Mathenia noted that employees were running a forklift during her visit, and contends that running a forklift such as done on the Property by the Applicant's employees is no louder than a lawnmower. Ms. Mathenia states that the Applicant is more than willing to participate in a noise study to determine whether the noise is actually above the decibel noise limit, making this an objective standard and asserting this is more appropriate than a denial. Likewise, Ms. Mathenia states that the Applicant is more than willing to submit to a traffic study.
13. Ms. Mathenia responded to neighbors' concerns over the fencing, explaining that her client put the screening in place to address neighbor complaints and wasn't trying to hide anything. With respect to trash and debris on the Property, Ms. Mathenia states that Google Earth photos show that the buildup of trash and debris on the Property started in 2017, before her client bought the Property. Ms. Mathenia reported that when the Wibergs purchased the

Property they removed about \$20,000 worth of trash and debris, removed an illegal single-wide trailer, and removed an illegal septic system. Ms. Mathenia also referenced permits the existing house required. Ms. Mathenia agrees there remains some outdoor storage that needs to be addressed, but the trash and debris has been removed, permits for the house obtained and underway, and a new septic system has been approved. Ms. Mathenia asserts the Applicant is more than willing to cooperate and happy to comply and requests that conditions of approval be based on objective standards they can meet and achieve. Ms. Mathenia also provided an example where the Applicant worked to address neighbors' noise concerns by removing back-up alarms from vehicles on the Property so as not to disturb neighbors with the beeping.

14. The Applicant, Christopher Wiberg, clarified that when they bought this Property it was neglected and the previous owners had allowed homeless people to move onto the Property. Mr. Wiberg stated that they removed about \$20,000 worth of "pure garbage" from the Property, trapped about 500 rats that were living in the garbage and debris, and it is taking time to clean up. Mr. Wiberg describes blackberry bushes "about two stories high" that they are still trying to clean up "on a day-to-day basis," and "when Covid hit, it really set us back." Mr. Wiberg states they bought the Property intending to turn it into their family home. He reports that it has taken them a while to get the Property cleaned up, that they are fighting blackberries every day, and Covid has put them back a couple of years financially and in making progress.
15. Mr. Wiberg asserts that whether or not there is a business on the Property, there will continue to be noise because it is a 20 acre property and he is mowing it with a tractor. He also points to a landscape screen that he is putting in place to help reduce noise and impacts to neighbors. Mr. Wiberg refers to an incident when a neighbor made a complaint that they were spraying too close to her well, stating they switched to weed-whacking that area to accommodate her. Mr. Wiberg also provided an anecdote concerning how he decided to move the location of his new septic in order to make sure it wouldn't interfere with the neighbor's well, even though the original location met setbacks. When asked about outdoor storage, Mr. Wiberg clarified that he is not seeking an Exception to the prohibition on outdoor storage and they are working to get everything organized and put away, and there will not be any outdoor storage.
16. Several members of the public were in attendance that offered testimony and comments concerning this application, including:
 - o David Gellos appeared and offered testimony and comments opposing this application. Mr. Gellos resides on Lawnview Circle, asked several questions and presented several arguments contending that the Applicant's proposal should not be approved, in addition to the written statement he submitted in advance of this hearing. Mr. Gellos points out that the interstitial areas (pass-through areas such as hallways) of the Barn must also be counted towards the maximum Building Floor Space that may be used for the home occupation. Mr. Gellos points to the various separate designated Home Occupation areas in the plans shown for the Barn, and the interstitial areas in between these areas aren't included by the Applicant in the totals shown. Mr. Gellos also pointed to information concerning the proposed new septic system being approved for up to 25 employees, questioning whether the Applicant actually intends to have as many as 25 employees on the Property.

- Ginger Bennett appeared and offered testimony and comments opposing this application. Ms. Bennett resides on Prairie View Dr., and presented several arguments contending that the Applicant’s proposal should not be approved, in addition to the written statement she submitted in advance of this hearing. Ms. Bennett stated that she works in real estate and is familiar with properties with home occupation businesses, and asserts that this application requires excessive exceptions, exceeding other home occupation businesses she is familiar with. Ms. Bennett characterizes the Applicant’s business as a more industrial use, and contends that enforcement of existing land use laws requires the application be denied.
 - Andrew and Veronica Tschirhart appeared and offered testimony and comments opposing this application. The Tschirharts reside on Mulligan Ct. and point to the Applicant’s history on the Property, including adding the second access driveway without a permit and the code violations that led to a code enforcement hearing and order to abate certain violations. The Tschirharts essentially contend that Conditions of Approval (as discussed in the County’s staff report) are difficult to enforce, require the Applicant’s cooperation, and assert that the Applicant has not shown cooperation in the past.
 - Ken Ivey appeared and offered testimony and comments opposing this application. Mr. Ivey resides on Prairie View Dr., and presented several arguments in addition to the written statement he submitted on behalf of the Aurora Butteville Barlow CPO. Mr. Ivey asserts that the designated Home Occupation areas in the plans shown for the Barn total more than 3,000 square feet and don’t include the bathroom shown on the floor plans. Mr. Ivey disputes assertions that the Home Occupation has no outside storage. He also points out that almost all adjacent properties are under two acres. Mr. Ivey states that the Applicant’s business operations begin at 6:00 am, causing backup truck noises. With respect to the existing house, Mr. Ivey points out that the Applicant purchased the Property five years ago and has completed a lot of work on the Barn, but hasn’t started work on the house and still doesn’t have an approved septic system. Mr. Ivey also presented an argument asserting that Joyce Wiberg is the principal owner of Ohana Group, LLC and must reside on the Property to meet Home Occupation requirements. Mr. Ivey points to construction activities on the Property and asserts there were initially no permits for the construction and the permit that was obtained for the Barn described the changes to the Barn as “personal.” He contends this is not an accurate description. Mr. Ivey further contends that the Applicant’s business is a major construction company that will grow, and this application should be denied.
 - Melissa Bussey appeared and offered testimony and comments opposing this application. Ms. Bussey resides on Mulligan Ct., and presented several arguments contending that the Applicant’s proposal should not be approved, in addition to the written statement she submitted in advance of this hearing. Ms. Bussey states that she “echoes what [Ken Ivey] said.” Ms. Bussey describes her property as “right behind the Hay Barn” and describes the noise from the Property as such that she wishes she never bought her property, asserting she wakes up to the sounds of vehicles and activity on the Property. Ms. Bussey further asserts that there is outside storage of materials and equipment on the Property, including large attachments to equipment.
17. Ms. Mathenia responded to public testimony presented at the hearing and provided rebuttal and explanation concerning some of the points raised. With respect to the septic report noting adequacy for 25 employees, Ms. Mathenia asserts this refers to an engineering report that the

site has adequate capacity for 25 employees, not that the business will have 25 employees. Ms. Mathenia responded to comments about the second access driveway by asserting the southern driveway access will be removed. With respect to comments about early morning noise, Ms. Mathenia responded by asserting that the business is not generating noise prior to 8:00 am other than the sounds of vehicles arriving, also noting that the employees typically depart by 3:00 pm to 3:30 pm, and are not there on weekends. Ms. Mathenia stated that the Applicant will participate in a noise study to demonstrate compliance with noise standards. Ms. Mathenia noted that the Applicant does not dispute that he does not yet live on the Property and resides elsewhere. She also reiterated that the actual construction activities take place off-site.

18. The Applicant, Mr. Wiberg, also provided some context for the noise. Mr. Wiberg asserts that his employees are not on site on weekends, but reports out that he is mowing the large Property with a tractor and this is part of the noise coming from the Property.
12. The County received written comments from Greg Leo, for Charbonneau Country Club. Mr. Leo submitted comments stating they are in addition to the points made in the Charbonneau Country Club letter of September 18, 2023.⁵ Mr. Leo's additional comments included:
 - The Charbonneau Country Club disagrees with the Applicant's attorney and asserts that approval of the proposed uses in this application requires a Goal 14 Exception.
 - The current use of the Property is inconsistent with the current rural residential use in the neighborhood.
 - Mr. Leo's letter also asserts that the application is not approvable because:
 - The applicant does not live on the Property.
 - There are too many employees.
 - The business generates too many vehicle trips.
 - The current use has an adverse effect on local property values.
 - Disputes comments by the Applicant's attorney concerning traffic congestion at the intersection of Airport and Miley Roads.
19. Prior to ending the public hearing and closing the record, the Hearings Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. As no one requested such opportunity, the Hearings Officer discussed with the Applicant whether they wanted to waive the open-record rebuttal period and waive the open-record "last word" period, and they indicated they wanted to submit a final written statement. The Hearings Officer closed the hearing, leaving the record open until 4:00 p.m., Thursday October 12, 2023 for the Applicant to submit a final written statement into the record.

E. POST-HEARING SUBMISSION BY APPLICANT

20. Ms. Mathenia submitted a post-hearing final written argument in support of the application, providing rebuttal in support of the application.⁶ With respect to noise, Ms. Mathenia

⁵ Mr. Leo also reported experiencing technical problems preventing participation during the hearing
Hearings Officer Final Order
Z0286-23-HOEX
Wiberg Home Occupation with Exceptions

suggests that noise generated by third parties may be inaccurately attributed to noise generated from the Property, referring to a commercial nursery approximately 400 feet south, a golf course fewer than 40 feet west, the Aurora State Airport approximately 1.3 miles south, and the I-5 freeway approximately 1,500 feet west, pointing to these sources of noise, particularly associated airplanes, commercial mowers, and re-routed traffic from I-5. Ms. Mathenia submits that “an objective noise study is the only unbiased way to determine the level of noise the business operated from the Property actually produces.”

21. In her final written argument, Ms. Mathenia reiterates that it is only the management side of the business that is run from the Property. Ms. Mathenia points out that all construction, demolition, remodel, and heavy-duty commercial work is conducted off-site. Ms. Mathenia points to ways the Applicant has been proactive and responsive to address neighbors’ concerns, referring to
 - When a neighbor asked the Applicant to not spray along the shared property line because her well is located close by, the Applicant ceased spraying and managed the area manually with a weed whacker.
 - When a neighbor claimed the location of the Property’s original septic system for the accessory structure (Hay Barn) was not set back sufficiently from her property, the Applicant took note and worked with the County to design and install a new, properly permitted septic system located away from this concerned neighbor’s property line.
 - When neighbors expressed displeasure at the sound of equipment back-up alarms, the Applicant silenced them.

22. Ms. Mathenia provided rebuttal of assertions at the hearing that the Applicant has made no attempt to comply with County code requirements or respond to violations until recent months, referring to actions the Applicant has taken since purchasing the Property. The referenced actions included obtaining a building permit for the residence in October 2019, and obtaining permits for upgrades to the Barn. The reference actions also included working to replace an illegal septic system on the Property with a legal, properly permitted system. Ms. Mathenia also reiterated the issues facing the Applicant with COVID-19 restrictions that made keeping the business operating a challenge, retaining Ms. Mathenia as Counsel to assist with code compliance, and submitting this land use application.

F. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III application pursuant to Section 1307, as required by Section 822.05 Exceptions. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews

⁶ As stated at the hearing, the final written argument period does not provide an opportunity to submit new evidence not introduced at the hearing or during the initial open-record period. Rather, it is an opportunity to submit final written rebuttal and arguments in support of the application. As such, no new evidence was considered as part of the record.

the application for conformance with the applicable standards and approval criteria, and issues a decision.

HOME OCCUPATION WITH EXCEPTIONS PERMIT

This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 316, 822, 1307, 1006 and 1007; and the Comprehensive Plan. The Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, ***adopted and/or modified or replaced by the Hearings Officer, as denoted by boldface type in italics. As stated at the outset of the hearing, testimony, arguments, and evidence must be directed towards an approval criteria identified in the staff report, or other relevant criteria found in the comprehensive plan or other land use regulation that the person believes applies to the decision. A number of assertions were made in opposition to this application, including several references to impacts on property values. Alleged property value impacts are not relevant to the applicable approval criteria. The Land Use Board of Appeals (“LUBA”) held that “[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D)...” Tylka v. Clackamas County, 34 Or LUBA 14 (1998). Other comments and assertions that are not relevant to approval criteria include descriptions of not being a good neighbor, and allowing coyotes on the Property.***

1) PROJECT OVERVIEW:

Overview: This application includes a completed land use application form, site plan, application fee and narrative addressing the criteria in Section 822 of the ZDO. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 822 are included in the application. The application was submitted on July 12, 2023 with additional materials received August 16, 2023. Following submission of the additional application materials, it was deemed complete on August 22, 2023.

Background: The subject site is outside the urban growth boundary and within the Rural Reserve to the south of Wilsonville. There are no known environmental hazards or overlays that require additional land use review since the stream is located on the eastern edge of lot 800 and through the middle of lot 804 while the proposed home occupation is estimated to be more than 450 feet from the stream in an existing building. Tax lot 800 is developed with a single family residence built in 1963 and renovated in 1986 and 2023 with a detached accessory structure permitted under renovated in 2020 through B0413120. Narrative indicated that 1,372 square feet of the existing accessory structure is proposed for the home occupation use, but the diagrams on the floor plan indicates approximately 2,307 square feet is proposed for the home-occupation. Current access to the site is provided by a private drive located along the western property line with an additional unpermitted drive installed between 2018 and 2020. NE Airport Road is a major arterial roadway and access is limited to one driveway according to the comments provided by the Engineering staff in the pre-application conference and September 20th memo for Z0286-23.

A pre-application conference (ZPAC0025-23;) to address the exception application process was held via Zoom on April 4, 2023. Comments from the relevant agencies and County department were collected to provide the applicant with information on how to submit a complete home occupation exception application and to be aware of possible conditions of approval to conduct the business on the property.

Notification went out to 760 property owners, Division of State Lands, Department of Aviation, City of Wilsonville, the Aurora-Butteville-Barlow CPO and four County departments. Staff received comments from the County Engineering (*Exhibit 5*). The comments provided by all parties will be addressed under Section 3 – Findings of this staff recommendation to the hearings officer.

2) **ZDO SECTION 316 RURAL RESIDENTIAL**

Subsection 316.03 allows home occupations as accessory uses in the Rural Residential Farm Forest 5-Acre (RRFF-5) District subject to Section 822.

Finding: The applicant addressed the level two of Subsection 822.04 and exception criterion of Section 822.05 of the Clackamas County Zoning Development Ordinance. Staff findings in response to the applicant’s submitted application (*Exhibit 2*) is shown below. This criterion has been met.

The Hearings Officer agrees that ZDO Section 316 allows home occupations as accessory uses. ZDO Section 316.03(A) and Table 316-1 set forth the allowed uses on RRFF-5 zone properties, which is the zoning for the subject Property. ZDO 316.03(A) prohibits uses in this zone unless they are specifically identified as permitted primary, accessory or conditional uses in the zone, as shown in Table 316-1. Generally, properties located within the RRFF-5 zone may be developed with a detached single-family dwelling, duplex, or manufactured dwelling, and several primary uses associated with farm uses and forestry uses. RRFF-5 zone properties may also be developed with accessory uses related to an established primary use, and certain conditional uses and similar authorized uses requiring land use approval. Commercial uses are not an allowed use on RRFF-5 zone property without specific land use approval, such as home occupations subject to Section 822 requirements. Thus, this application must meet the review criteria of ZDO Subsection 822.

However, as pointed out by the City of Wilsonville and several other commentators, the use must also remain consistent with ZDO 316.03(A). A home occupation is allowed on RRFF-5 zone property only as an accessory use. A home occupation is not an allowed primary use of RRFF-5 zone Property. In other words, the home occupation cannot be a “stand-alone” use, but a residential home can be. The home occupation use requires the primary residential or “home” use as the primary use of the property. Thus, the owner and Applicant cannot establish a commercial use of this RRFF-5 zone property as the primary use. To do so would require a zone change, including a Goal 14 exception. Based on the above discussion I disagree that this criterion is met.

3) **ZDO SECTION 822 HOME OCCUPATIONS**

Section 822 of the Clackamas County Zoning and Development Ordinance regulates home occupations. This application is specifically subject to Subsection 822.04 which controls

level two Major Home Occupations. Subsection 822.04(A-L) identifies the criteria that must be met for a home occupation to be approved. The Planning Division staff has reviewed this subsection in conjunction with this proposal and makes the following findings:

822.04 Level Two And Three Major Home Occupations:

A major home occupation requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

- a. *Subsection 822.04(A): The operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.*

Finding: The applicant stated Christopher Wiberg is the Manager of Ohana Group, LLC who is the property owner and Christopher Wiberg will live full-time in the home and operate the home occupation. A condition to this effect is warranted in the conditions of approval. **Staff finds this criterion can be met as conditioned.**

The Hearings Officer disagrees with this staff finding. Subsection 822.02. defines “Operator” as: “The person who conducts the home occupation, has majority interest in the home occupation, and is responsible for strategic decisions and day-to-day operations of the home occupation.” Subsection 822.04.A. requires that the operator reside full-time in a lawfully established dwelling unit on the Property. Subsection 822.05.C. provides that an exception “shall not be granted” to this requirement. Here, no one actually resides on the Property and the house itself is not in a livable condition. Mr. Christopher Wiberg (Applicant) appears to meet the requirements to be the “operator” of this business.⁷ However, as Mr. Wiberg has stated, he does not currently reside on the Property. Rather, Mr. Wiberg bought the Property with the intention of repairing the existing house and moving in, but has experienced delays and anticipates that it will take at least another year to complete the needed repairs before moving onto the Property. I cannot waive this requirement, and this criterion must be met prior to operation of this Home Occupation on the Property. The relevant portion of the proposed Condition of Approval referenced in the staff report states: “The business owner Christopher Wiberg, is the representative of the current property owner and will reside in a dwelling on the property.” This Condition of Approval would require the Applicant to reside on the Property prior to operating the Home Occupation, a condition that cannot be met for at least a year. As discussed, a home occupation is an “accessory” use of residential property that requires a finding of actual primary residential use of the property by the “operator” as a threshold determination. This criterion is not met.

- b. *Subsection 822.04(B) the home occupation shall have no more than five employees.*

Finding: The applicant stated that the between five and eight employees of the home occupation business will be working in the “Barn” and the owner requests an exception for a total of 15 employees. Subsection 822.04(A) allows up to five employees for the level two major home occupation business. A condition to this

⁷ I understand there is an assertion that Mr. Wiberg is not the “principal” owner of the Ohana Group LLC. Mr. Wiberg is, however, manager of the LLC, submitted this application on behalf of the LLC, and appears to have full authority.

effect is warranted in the conditions of approval. **Staff finds it is feasible for this criterion to be met if granted the exception as requested in the application.**

The Applicant requested an Exception to this criterion limiting a level two home occupation to no more than five employees. The Hearings Officer concurs that it is feasible for this criterion to be met if the requested exception is approved.

- c. *Subsection 822.04(C)(1): From 8:00 a.m. until 6:00 p.m., the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. During all other hours, the home occupation shall not create noise detectable to normal sensory perception off the subject property.*

Finding: The applicant states the activities associated with the proposed business include:

Primary business is a management company involved in the day to day running of a small family-owned construction company. Primary activities are remote (cell phone/email) management and paperwork conducted on computers. Infrequent meetings conducted in a conference room setting.

Secondary business is a family owned construction company - this site will serve as an off-site storage facility for shipping and receiving of tools and equipment - including screw guns, lights, ladders, hand tools, toolboxes, saws, plastic sheeting.

The applicant states the noise is limited to the use of a warehouse forklift operated between the hours of 08:00 am and 03:00 pm, Monday through Friday.

In accordance to Subsection 822.04(C) (1) (a) idling of vehicles is exempt from the noise limits. However, this exemption does not extend to excessive idling, which in past decisions and approvals idling is limited to between 10-15 minutes to enable the vehicle system and brakes to safely function. A condition to this effect is warranted in the conditions of approval. No comments related to idling vehicles or noise were submitted from the notified parties. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs that it is feasible for this criterion to be met. However, the Hearings Officer notes here that the above reference to Subsection 8922.04(C)(1)(a) should be clarified to state that noise generated by vehicles entering or exiting the subject property is exempt from the noise limits, but no amount of noise generated by idling vehicles is exempt. To clarify the staff finding here, there were numerous comments from notified parties about noise, and noise from vehicle backup alarms, but not about noise from idling vehicles.

Subsection 822.04(C) (2) A noise study may be required to demonstrate compliance with Subsection 822.04E (1).⁸ If a noise study is required, measurements shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. The sound level meter shall contain at least an

⁸ I view the code reference in ZDO 822.04(C)(2) stating: "A noise study may be required to demonstrate compliance with Subsection 822.04(E)(1)" as a typo. Correctly read in context the reference is to **Subsection 822.04(C)(1)**.

A-weighted scale, and both fast and slow meter response capability. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.

Finding: As addressed above under the findings for Subjection 822.04(C) (1) (a) that applicant indicated that the noise restrictions would be met. However, testimony received for this application indicates that noise may begin earlier than 6:00 am, and that noise is a problem. Staff finds a noise study to determine if this criterion is met is applicable. **As conditioned it is feasible for this criterion to be met.**

The Hearings Officer concurs that it is feasible for this criterion to be met. Several neighbors have reported that noise on the Property begins as early as 6:00 a.m. and that noise from the Property is an issue. I find plausible the assertions of Mr. Wiberg and Ms. Mathenia that not all noise in the vicinity of the Property is generated by the operation of the business. I also found credible Mr. Wiberg's testimony that he uses a tractor to mow his Property. Use of a tractor to mow a large parcel like this is noisy, but is part of maintaining a large property and not noise created by Mr. Wiberg's business. Staff proposed a Condition of Approval requiring the Applicant to submit a noise study to ensure that noise limits are met. I note that in her final written statement, Ms. Mathenia requested the opportunity to demonstrate that noise levels produced on the Property are within permitted limits prior to denying this application. I would not deny this application for exceeding the noise limits standards without an objective noise study.

Subsection 822.04(D): The Home Occupation shall not create vibration, glare, fumes or odors detectable to normal sensory perception off the subject property. Vehicles entering or exiting the subject property shall be exempt from this standards, but idling vehicles shall not.

Finding: There is no evidence that the activities as proposed by the applicant will create vibration, glare, fumes, or odors detectable to normal sensory perception off the subject property. The regulations prohibit excessive idling of vehicles which will resolve issues associated with fumes or odors detectable to normal sensory perception off the subject property. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs that it is feasible for this criterion to be met. I note that there are written complaints concerning strong diesel fumes and smell of chemicals. I also note that it appears Applicant's business activities have included outdoor storage of equipment and materials, and use of a forklift. A Condition of Approval could be imposed requiring that the home occupation activities not create fumes or odors detectable to normal sensory perception off the subject property.

Subsection 822.04(E): The home occupation shall not create visual or audible electrical interference in any radio, television, or other electronic device off the subject property or cause fluctuations in line voltage off the subject property.

Finding: There is no evidence that the activities as proposed by the applicant will create visual or audible electrical interference in any radio, television or other electronic devise off the subject property. A condition to this effect is warranted in the conditions of approval. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs.

Subsection 822.04(F): No outside storage, display of goods or merchandise [visible from outside] the enclosed building space in which such goods or merchandise are stored, or external evidence of the home occupation shall occur, except as specifically allowed by Subsection 822.04. Notwithstanding this provision, business logos flush-mounted on vehicles used in the daily operations of the home occupation are allowed.

Finding: The applicant states outdoor storage is not proposed for the home occupation use, but that “this site will serve as an off-site storage facility for shipping and receiving of tools and equipment - including screw guns, lights, ladders, hand tools, toolboxes, saws, plastic sheeting”. Aerial images show a significant amount of stuff that could be outdoor storage and the current existence of outdoor storage was a concern shared by neighbors and the CPO. A condition to this effect is warranted in the conditions of approval. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs that it is feasible for this criterion to be met. I note that there are written complaints concerning outdoor storage of materials and equipment on the Property, and aerial photos submitted showing these things. The Applicant stated he would remove all of the remaining outdoor storage from the Property. Staff proposed a Condition of Approval stating that: “Outdoor storage and activities are prohibited per ZDO 822.04(F).” I note, however, that the ZDO also prohibits any “external evidence of the home occupation” and would add this additional language to the condition.

Subsection 822.04(G): signs shall be permitted pursuant to Section 1010 signs.

Finding: The applicant does not propose to use signage for the business. Future signage shall be subject to Subsection 1010.06(B) that limits signage to 8 square feet at a maximum height of 6 feet. Signage can be located in the setback provided it is behind the property line. A condition to this effect is warranted in the conditions of approval. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs.

Subsection 822.04(H) Vehicles associated with the home occupation shall not be stored, parked, or repaired on public rights-of-way. Parking spaces needed for employees or customers of the home occupation shall be provided in defined areas of the subject property. Such areas shall be accessible, usable, designed, and surfaced for parking.

Finding: The applicant indicates the public right of way will not be used for the home occupation use since adequate area is available on-site since the property is almost 20 acres in size. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs.

Subsection 822.04(I): If the subject property takes access via a private road or access drive that also services other properties, evidence shall be provided, in the form of a petition that all other property owners who have access rights to the private road or access drive agree to allow the specific home occupation described in the

application. Such evidence shall include any conditions stipulated in the agreement. A new petition shall not be required for a renewal application.

Finding: The subject property takes access off of a public road that is classified as a minor arterial. **Therefore this criterion does not apply.**

The Hearings Officer concurs with this finding.

Subsection 822.04(J): Notwithstanding the definition of home occupation in Section 202, Definitions, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially in the operation's dwelling or other buildings normal associated with uses permitted in the applicable zoning district.

Finding: The subject site is not within the AG/F, EFU and TBR. **Therefore, staff finds this criterion does not apply.**

The Hearings Officer concurs with this finding.

Subsection 822.05(K): Hazardous materials shall not be present on the subject property in quantities greater than those normally associated with the primary uses allowed in the applicable zoning district, or in quantities greater than those exempt amounts allowed by the current edition of the Oregon Structural Specialty Code, whichever is less.

Finding: The applicant states that the proposed home occupation would not include the storage of any hazardous materials. The only storage contemplated includes screw guns, lights, ladders, hand tools, toolboxes, saws, plastic sheeting. Testimony included concern over pesticides and other smells coming from the property. A condition to this effect is warranted in the conditions of approval to ensure if any hazardous materials are present the storage would meet the appropriate storing requirements. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs that, with the proposed condition, it is feasible for this criterion to be met. I note that there are written complaints concerning outdoor storage of containers of unknown liquids and chemical containers on the Property. The Applicant stated he would remove all of the remaining outdoor storage from the Property and this would include any such containers.

Subsection 822.04(L) A level two major home occupation may be established if less than 50 percent of the lots of record abutting the subject property are equal or less than two acres; however , a renewal application shall be evaluated on the basis of the lost size analysis first applied to the home occupation. A lot of record is considered to be abutting if it is contiguous to the tract on which the home occupation is proposed, or if it is directly across an access drive, private road, or public or county road with a functional classification below that of a collector. The following standards differ depending on whether the proposed home occupation is a level two or three.

Finding: The subject site is surrounded by 16 parcels. Two parcels exceed two acres in size and the remaining parcels are under two acres in size. Based on the surrounding parcel sizes staff finds the site is eligible to be reviewed under the level two home occupation criterion. **Staff finds this criterion to be met.**

The Hearings Officer concurs.

Subsection 822.04(L) (1): The home occupation may be conducted in a dwelling unit, but except in the case of a bed and breakfast homestay – is limited to incidental use thereof. For a level two major home occupation, a maximum of 500 square feet of accessory building floor space may be used for the home occupation. If only a portion of an accessory building is authorized for use in the home occupation, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the home occupation space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the home occupation space and the remainder of the building.

Finding: Whereas a level two major home occupation is allowed a maximum of 500 square feet of area within an accessory structure the applicant has proposed to take an exception to Subsection 822.04(L)(1) and propose to use of up to 3,000 square feet of existing building square footage in the pre-existing 2 story building that has an approximate footprint of 80’X64’.

The applicant proposes to use a variety of areas within the accessory structure for the home occupation including 474 square feet of the second floor and 470 square feet on the first floor for storage and about 1,500 square feet for rooms and offices. If the exception criteria are not satisfied then a condition of approval limiting the use to 500 square feet would be appropriate. This request shall be addressed further under Subsection 822.05(C) (2). Neighbors and the CPO are concerned that the barn is over 6,000 square feet of accessory space and the property owners currently have a violation for the property so there is concern about the compliance with the 3,000 square foot limit of space especially since “According to the red areas, the employees don’t have a bathroom or shower available to them” (CPO observation in Exhibit 17). As the CPO noted in Exhibit 10 the proposed space is “seven times the maximum allowed on Level 2 and 5 times the limit for a Level 3 home occupation.”

Reviewing the floorplans it is difficult to determine how the required separation with “a partition wall at least seven feet in height,” could be completed since as proposed access to home occupation space is through non-home occupation space (see excerpt below with doors requiring access through area not intended for the home occupation).



Staff finds it is not feasible for this criterion to be met as proposed. If approved for an exception under Subsection 822.05(C) (2) as requested a condition of approval modifying the proposal is needed.

The Hearings Officer concurs in this finding. If approved for an exception the portion of the accessory building authorized for use in the home occupation would require significant modification. A Condition of Approval could be imposed designating a maximum approved square feet of accessory building floor space with a partition wall consistent with the requirements of ZDO Subsection 822.04(L)(1).

Subsection 822.04(L) (2) A level two major home occupation shall not generate more than 20 vehicle trips per day. A vehicle trip is defined as "...vehicular movement either to or from the subject property by any vehicle used in the home occupation, any delivery vehicle associated with the home occupation, or any customer vehicle."

Finding: A level two home occupation is limited to 20 trips per day, or 10 round trips. The applicant is proposing up to 15 employees plus the delivery of the tools to be associated with the home occupation. The applicant states "The traffic generated by the Owner's employees, at approximately 10-20 trips per day will not create a burden for either a Collector or a Major Arterial Street as both street designations are intended for moderate to heavy traffic." However, this number of trips does not appear to count all of the trips for the 15 employees and does not address the trips generated by tool deliveries that are intended to be stored on site as part of the home occupation. Staff finds the burden of proof for trip generation is not met and anticipate that an exception to 822.04(L) (2) may be needed in addition to the exceptions requested by the applicant for other sections of the code. Neighbors and the CPO also shared concern over the traffic that is being generated currently and the traffic being proposed. **This criterion could be met with the granting of another exception, but this criterion is not currently met since an exception to this criterion was not requested by the applicant and evidence was not provided on the total amount of traffic the proposed use would generate.**

The Hearings Officer concurs in this finding. The application stated that the proposed home occupation would generate no more than 20 trips per day, but does not account for all of the trips required for the proposed 15 employees plus the deliveries anticipated by this proposal. A home occupation with five employees (including the operator) and occasional deliveries can be reasonably anticipated to generate no more than 20 trips per day. This application describes two business activities: a management company that runs a construction company, and a construction company.

The Applicant proposes to operate the management side of the construction business from the Property, with the construction activities taking place at various off-site locations. The application states that the Property will be used as off-site storage for the shipping and receiving of various construction-related items. Use of the Property for such a storage function will necessitate additional trips to and from the Property by employees retrieving and returning such items, in addition to the trips involving delivery trucks. Here, I note that the "before and after" aerial photos of the Property show that the former "Hay Barn" on the Property has been

replaced with what appears a large working warehouse facility with concrete loading areas, a large asphalt area, and several smaller storage buildings. I also note that the “after” photo shows a significant amount of materials stored outside, but I do not know whether these materials remain stored outside.

I find that the off-site storage use of the Property is significant, noting also the use of a forklift on the premises to move these materials, loading and unloading them for use at the off-site locations, with each related vehicle counting as an additional trip. In other words, each management employee or construction employee that leaves the Property to supervise, deliver materials or equipment, or inspect off-site construction activities will also generate additional trips. Regardless whether it is the management employee or the construction employee, an employee is picking up materials and/or equipment from the Property and returning it, generating these additional trips. Thus, each of these fifteen employees will generate at least two and perhaps four or more additional trips per day, in addition to delivery trucks bringing the materials and equipment to the Property. I find that the proposed home occupation can be anticipated to generate at least a proportionate number of trips to the number of employees, and therefore 15 employees can be expected to generate more than 30 vehicle trips per day, and on some days this business operation may generate 60 vehicle trips or more.

Subsection 822.04(L)(3): The maximum number of vehicles that are associated with a level two major home occupation and located on the subject property shall not exceed four at any time, including, but not limited to, employee and customer vehicles. A level two major home occupation shall not involve the use, parking, storage, or repair of any vehicle exceeding a gross vehicle weight rating of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks, and such deliveries shall be limited to no more than one per day.

Finding: The applicant discusses the vehicles used by employees, and noise from a forklift, but did not discuss the number of anticipated delivery truck visits per week. Therefore, while it is clear from the application materials that more than five vehicles associated with the home occupation business will be on the property at one time, the total number is unknown. Additional information is needed on the number of deliveries anticipated and about the vehicles used on site such as the warehouse forklift, since depending on the particular type of delivery, or forklift, it may exceed 11,000 pounds vehicle weight, and the level two home occupation does not allow vehicles over 11,000 pounds or more than one delivery on a given day. In accordance to Subsection 822.02(F) a vehicles id defined as “*Any motorized or non-motorized transportation equipment intended for use on public roads and associated with the home occupation, including, but not limited to, a car, van, pickup, motorcycle, truck, bus, recreational vehicle, detached trailer, or a truck tractor with no more than one trailer. Any attached trailer beyond one is a separate vehicle. A detached trailer is categorized as equipment, rather than a vehicle, if it is stored in an enclosed accessory building floor space.*”

The combined number of vehicles, including the personal vehicles of the property owners, the employees vehicles, and the one delivery truck, exceed the allowed vehicles for a level two major home occupation. **Staff finds it could be feasible for**

this criterion to be met if approved for an exception under Subsection 822.05(C) (2) however, evidence was not provided on the total number of vehicles the proposed use would generate so additional information is needed.

The Hearings Officer concurs in this finding. As there are no public transportation services, each employee can reasonably be anticipated to park a personal vehicle on the Property, as well as the operator Mr. Wiberg as he does not reside on the Property.

Subsection 822.04(L) (4) the following uses shall be prohibited as a major home occupation.

- a. Marijuana production*
- b. Marijuana processing*
- c. Marijuana wholesaling*
- d. Marijuana retailing.*
- e. As a level two major home occupation:*
 - i. Repair or motorized vehicles and equipment, including the painting or repair of automobiles, trucks, trailers, or boats:*
 - ii. Towing and vehicle storage business and*
 - iii. Any use that requires a structure to be upgraded to a more restrictive use, under the current edition of the Oregon Structural Specialty Code, than an automobile repair shop with open flame; and*

Finding: The proposed home occupation does not include marijuana productions, processing, wholesale, retailing, or involve vehicle repair, painting, towing, or include uses that require a structure to be upgraded to a more restrictive use. **This criterion does not apply.**

The Hearings Officer concurs in this finding.

d. 822.05 Exceptions

An exception to any of the standards identified in Subsection 822.04 requires review as a Type III application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

The use shall remain compatible with the area. The following factors shall be considered when determining if a use is compatible with the area:

Subsection 822.05(A) (a): the number of standards identified in Section 822.04 that will be exceeded, it is presumed that the more standards exceeded, the more difficult it will be to demonstrate compatibility.

Finding: The applicant has proposed to take exception to two criterion, Subsection 822.04(L) (1) for use of 3,000 square feet of the pre-existing detached accessory structure for the home occupation use and Subsection 822.04(B). Staff finds the two exceptions requested are in addition to two other exceptions that would be needed for the proposal to meet the criteria for a home occupation. The additional criteria that would need an exception include Subsection 822.04(L) (2) to allow more than 20 vehicle trips per day and Subsection 822.04(L) (3) to have more than 4 vehicles associated with the home occupation on the property at a time. Therefore the number of standards exceeded would be four and with four standards that include increased

traffic and increased numbers of vehicles, the use starts to look urban in nature and the property is in the Rural Reserve in an area that is rural residential in nature. This conflict with the rural residential area is supported by many of the testimonies provided including Exhibit 4. **Therefore, staff find that this proposed home occupation is not compatible with the rural residential area due to the increased traffic and large number of vehicles on the site in the parking lot.**

The Hearings Officer concurs that the proposed home occupation is not compatible with the rural residential area, based on the number of standards identified in ZDO Subsection 822.04 that will be exceeded. The two exceptions requested by the Applicant (increase of employees from 5 to 15, and increase of building floor space from 500 square feet to up to 1,372 square feet) are not all of the exceptions required to approve this application. The scope of the Applicant's proposal also requires an exception to the number of vehicle trips per day, an exception to the number of vehicles associated with the proposed home occupation, and an exception to the requirement that the operator reside full-time on the subject property.⁹

The distinction between an application for a level two home occupation versus a level three home occupation is the requirement that at least 50 percent of the lots of record abutting the subject property are larger than two acres. Here, the majority of the properties abutting the subject property are less than two acres, and thus a level three home occupation cannot be established on the Property. The difference concerns compatibility with the surrounding area, with home occupations on property abutting mostly larger properties presumed to have less impact to the character of the neighborhood, and greater ability to mitigate impacts. A cursory examination of the provided "before and after" photos shows that the Barn facility is located near the property line for some of these smaller abutting neighboring properties, and therefore has a larger impact.

Thus, a level two home occupation is restricted to 500 square feet of accessory building floor space whereas a level three home occupation is allowed to use up to 1,500 square, because of this larger impact. Further, a level three home occupation may generate up to 30 vehicle trips per day, whereas a level two home occupation is limited to 20 vehicle trips per day. Similarly, up to five vehicles may be associated with a level three home occupation, one of which is permitted to have a gross vehicle weight rating exceeding 11,000 pounds. By contrast, a level two home occupation may have no more than four vehicles associated with the home occupation, none of which is permitted to have a gross vehicle weight rating exceeding 11,000 pounds. These three standards incorporate the substance of the difference in size and scope between a level two and level three home occupation.

This larger property could possibly mitigate the impacts of a level two home occupation and remain compatible with the surrounding area. However, the proposal exceeds the standards for a level three home occupation and would require exceptions to level three home occupation standards for the number of

⁹ As noted, an exception to the requirement that the operator reside full-time on the subject property cannot be granted. See ZDO Subsection 822.05(C)(1).

employees, vehicles, and trips. Further, these are not small exceptions. As pointed out by several comments the County received, the business has three times the number of employees and vehicles allowed for a level three home occupation, and as discussed above can be expected to generate 60 or more vehicle trips in a day, three times the number of trips allowed for a level two home occupation and twice the number allowed for a level three home occupation.

Subsection 822.05(A)(b): The character of the neighborhood, including such factors as the presence of off-site similar and outside storage uses, proximity of off-site dwellings, level of surrounding traffic, size of off-site accessory buildings, and background noise levels;

Finding: The applicant states “the accessory building has been tastefully designed with a barn aesthetic, intended to keep with the character of the neighborhood. The property previously included a large hay barn, so the new accessory building is very much in keeping with the original character of the property and neighborhood. Multiple properties in the neighborhood contain large, oversized garages of the size that would house a recreational vehicle so the neighborhood is accustomed to barns and larger garages one often sees in rural neighborhoods. We will not produce any construction noise as”. Staff finds the use of a portion of the pre-existing accessory structure will not impact the surrounding environment, but this narrative makes it sound as though the building is a new building. **Whether the accessory structure is the old hay barn or a new accessory building needs to be clarified.** Testimony received indicates concern for the surrounding environment from the current and proposed uses.

The potential impact from the home occupation includes four times the number of vehicles usually allowed with a level two home occupation and a number of vehicle trips that exceed that allowed for a level three home occupation. While the subject property is large, the majority of neighboring properties are less than an acre in size, so the neighbors have less of an ability to modify their own actions to avoid impact from the proposed home occupation. Testimony received support this conflict between the intensity of use and rural residential neighbors.

The proposed home occupation will include no outside storage, and the existing accessory structure is compatible with the rural residential zoning and use of adjacent properties. But the use of the accessory structure includes 15 people and their transportation needs, in addition to deliveries and picking up of tools and items in storage of the construction business. **Therefore, this criterion may not be met.**

The Hearings Officer concurs that the proposed home occupation is not compatible with the rural residential area, or the character of the neighborhood. This is a rural residential neighborhood with single family dwellings on properties mostly ranging in size from 0.47 acres to 1.11 acres, with County staff reporting two area properties larger than 2 acres. Many of the properties in this neighborhood have accessory structures such as detached garages, but none are similar in size to the Barn on this Property, with its reconfigured appearance as a working warehouse facility with concrete loading areas, large asphalt footprint, and various smaller storage buildings. The former owner of the property near the Barn (Ms. Gionta) made numerous complaints to the County and sold her property, asserting (along

with many other neighbors) issues with outside storage uses, vehicles, number of employees, traffic, and noise levels. As I stated, I would not deny this application for exceeding noise criteria without a noise study, but still find the proposal incompatible with the character of the neighborhood for these other reasons. Further, aside from the factors discussed above, I find this proposed use not compatible with the area or with the character of the neighborhood for the single reason that the operator does not reside on the Property. This fact alone makes the proposed use incompatible with the character of the neighborhood.

Subsection 822.05(A) (c): The ability to mitigate impacts by driveway and road improvements, screening, landscaping, building location, building design, and other improvements.

Finding: The applicant states that they “have installed living plant barriers and screens but the location of the plantings were not included in the site plan or narrative. **This needs to be clarified.** Additional requirements by the County Engineering Department outlined in the October 25, 2022 memorandum (Exhibit 5). Conditions to this effect are warranted in the conditions of approval. Staff finds that compliance with the conditions of approval could ensure it is feasible for this criterion to be met.

The Hearings Officer disagrees with staff findings that compliance with the proposed conditions of approval could mitigate the effects of the proposed use. As discussed above, the proposed use is not compatible with the area or with the character of the neighborhood. Making driveway and road improvements, providing screening, landscaping, building design, and other improvements will not make the proposed use compatible with the area or with the character of the neighborhood.

Subsection 822.05(A) (d): Potential environmental impacts, including effects on air and water quality; and

Finding: The applicant states there will be no measurable environmental impact since they are committed to preserving and enhancing the 4+ acres of oak forest and the wetlands that run the width of the property.

An accessory structure was previously built, but the narrative indicates there is a new structure proposed as part of this application. A permit was not found for the “hay barn” or for the “new” proposed accessory structure. **Clarification on whether a new structure is proposed is needed.** No indication was made regarding how the wetlands and forest would be preserved. **Staff therefore is unable to determine if this criterion is met,** but believes it is feasible for this criterion to be met with an additional conditions of approval.

The Hearings Officer finds that it is feasible to meet this standard through conditions of approval. I note that the County received a number of comments from neighbors concerning potential environmental impacts, including effects on air (diesel and chemical odors) and water quality (concerns over unapproved septic and storage of unknown liquids and chemicals). The County submitted proposed conditions of approval concerning fumes and odors and outdoor storage that are adequate to address these issues.

Subsection 822.05(A) (c): Provision of adequate and safe access to public, County, or state roads.

Finding: The September 20th, 2023 memo (*Exhibit 5*) from the Clackamas County Engineering Department clarifies requirements necessary to provide safe access to the site and public road, along NE Airport Rd. This includes removing one of the driveways due to spacing issues. A condition to this effect is warranted in the conditions of approval. Staff finds it is feasible for this criterion to be met.

The Hearings Officer concurs that it is feasible to meet this standard through conditions of approval. I note that the County received a number of comments concerning traffic impacts. However, I was persuaded by the comment submitted by Mr. Kenneth Kent, County Development Engineering, finding that: “NE Airport Road is improved to a width of 28 feet and is adequate to serve the proposed home occupation.”

Subsection 822.05(B): Services adequate to serve the proposed use shall be available, including transportation, public facilities, and other services existing or planned for the area affected by the use. At a minimum, compliance with Subsections 1006.03(B), 1006.04(B), and 1006.06(C) (except as set forth in Subsection 1006.07), and 1007.07 is required.

Subsection 1006.03(B): Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.

Finding: The applicant states the subject property contains two wells and the flow is sufficient for the employees proposed with the home occupation. The water source is not a public or community service, but an existing well. **This criterion is not applicable.**

The Hearings Officer concurs.

Subsection 1006.03(B)(1): The statement shall verify that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution. Alternatively, the statement shall verify that such levels and capacity can be made available through improvements completed by the developer or the system owner.

Findings: The on-site water source is provided by a private well, therefore this criterion is not applicable. The Aurora Fire District did not have comments for the proposed land use application. Staff finds that compliance with the conditions of approval shall ensure it is feasible for this criterion to be met.

Staff finds it is feasible for this criterion to be met.

The Hearings Officer concurs.

Subsection 1006.03(B)(2): if the statement indicates that water service is adequate with the exception of fire flows, the applicant shall provide a statement from the fire district service the subject property that states that an alternative method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.

Findings: The onsite water source is a private well. **Therefore, this criterion is not applicable.**

The Hearings Officer concurs.

Subsection 1006.03(B)(3): The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve water system capacity for the development.

Finding: The onsite water source is a private well, therefore **this criterion is not applicable.**

The Hearings Officer concurs.

Subsection 1006.04(B): Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.

Finding: The site has a septic system to accommodate sewer needs. The Septic and Onsite Wastewater Program does not use Preliminary Statement of Feasibility forms and instead relies on Authorization Notices to ensure adequate septic systems are in place to accommodate the needs. The proposed use does include a bathroom and use of the existing septic system, although as noted by the CPO the bathroom square footage may not be included in the area of accessory building proposed for the home occupation. *Exhibit 2a* includes comments from the Soils Departments showing the evaluation found the site was suitable for an Onsite Wastewater treatment system for a 4 bedroom single family residence and an office with a maximum of 15 employees. If the proposed use changes to include an additional bathroom, or additional employees in the accessory structure, an Authorization Notice will be required. **A condition to this effect is warranted in the conditions of approval if this application is approved.**

The Hearings Officer concurs that it is feasible to meet this standard through conditions of approval.

Subsection 1006.04(B)(1): The statement shall verify that sanitary sewer capacity in the wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner.

Finding: If the on-site septic system is to accommodate additional employees above the 15 identified by the Septic and Onsite Wastewater evaluation, then an Authorization Notice is required to ensure the existing septic system can accommodate the extra usage of the onsite septic system. A condition to this effect is warranted in the conditions of approval. **Staff finds it is feasible for this criterion to be met.**

The Hearings Officer concurs that it is feasible to meet this standard through conditions of approval.

Subsection 1006.04(B) (2): The service provider may require preliminary sanitary sewer system plans and calculations for the proposed development prior to signing a preliminary statement of feasibility.

Finding: The subject site has a septic system serving the subject site. A statement from the Clackamas County Septic and Onsite Wastewater Program staff, dated July 19, 2023, specified that the site was evaluated and was found to be suitable for a septic system that would serve the home occupation and the residence. A condition to this effect is warranted in the conditions of approval. Staff finds it is feasible for this criterion to be met.

Subsection 1006.04(B)(3): the statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve sanitary sewer system capacity for the development.

Finding: ***This criterion is not relevant since the site is served by an onsite wastewater system and not a sanitary sewer system.*** This criterion is satisfied by the letter documenting the suitability of the site for septic pursuant to the evaluation completed in July 2023.

The Hearings Officer concurs.

Subsection 1006.06(C): Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.

1. The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.

2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

Finding: The Clackamas County Engineering Department oversees surface water runoff for the subject site. Based on the comments receive in the September 20th, 2023 memorandum a Development permit is required for review of the new driveway prior to issuance of a “Change of Occupancy” permit. Conditions to the effect of the above statements are warranted in the conditions of approval. Staff finds it is feasible for the conditions of approval to be met, thereby ensuring compliance with Subsection 1006.06(C).

The Hearings Officer concurs that it is feasible to meet this standard through conditions of approval.

Subsection 1006.07(A): A land use application shall be deemed complete and may be approved without the submittal of one or more of the preliminary statements of feasibility required by Subsection 21006.03, 1006.04, and 1006.06 if the applicant demonstrates that a good faith attempt has been made to obtain the statement(s).

- (1) *A statement signed by the applicant indicating that the service provider or surface water management authority has not responded to a request for a preliminary statement of feasibility or has refused to issue one.*
- (2) *A copy of the letter delivered to the service provider or surface water management authority clearly requesting a preliminary statement of feasibility. The letter shall be dated no less than 30 days prior to the submittal of the land use application.*

Subsection 1006.07(B): In the absence of evidence in the record to the contrary, it shall be presumed that the failure of a service provider or surface water management authority to respond to a request for a preliminary statement of feasibility constitutes a finding of adequacy of service. The presumption shall be for the purposes of land use application approval only and does not guarantee that service can be provided.

Subsection 822.05(C) (1): An exception shall not be granted to Subsection 822.04(A), (I), (J) or (L) (4) (a) through (d).

Finding: The required materials have been submitted for review of the application. This criterion is met.

The Hearings Officer concurs.

Subsection 822.05(C) (2): Accessory building floor place for the home occupation shall not exceed 3,000 square feet.

Finding: The applicant proposes to use between 1,372 and 2400 square feet of an existing 80'X64' 2 story building (5,120 square feet in the first floor plus the 2,593 square feet on the second floor) detached accessory structure included a modification permitted under B0413120. No permit was found for the original construction of the detached accessory structure. The nature of the occupancy shall change, therefore the applicant shall apply for and receive a "Change of Use" permit from the Building Codes Division.

A floor plan indicating how the square footage used for the home occupation will be separated from the remainder of the structure is needed. Including space on the first and second floors makes it more difficult to separate the home occupation space from the non-home occupation space. Reviewing the floorplans it is difficult to determine how this required separation could be completed since as proposed access to home occupation space is through non-home occupation space (see excerpt below with doors requiring access through area not intended for the home occupation).



The Aurora Fire District did not have comments for the structure converting from the hay barn occupancy to an office/commercial occupancy.

As proposed staff do not find this criterion to be met, or feasible with conditions.

The Hearings Officer concurs in this finding. If approved for an exception the portion of the accessory building authorized for use in the home occupation would require significant modification. A Condition of Approval could be imposed designating a maximum approved square feet of accessory building floor space with a partition wall consistent with the requirements of ZDO Subsection 822.04(L)(1).

Subsection 822.05(C) (3): If the subject property is in an EFU, TBR, or AG/F zoning district, the number of employees shall not exceed five.

Finding: The subject site is within the RRFF-5 District and will only have four to 15 employees. **This criterion is not applicable.**

The Hearings Officer concurs.

G. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer DENIES application Z0286-23-HOEX for a permit for a Level Two Home Occupation with Exceptions on the subject property.

Dated: October 23, 2023

Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.