

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by Ivan Saranchuk for approval ) **FINAL ORDER**  
of a conditional use permit to operate a home occupation )  
to host weddings and events on a four-acre parcel located ) **Case No. Z0367-23-C**  
at 10611SE 232<sup>nd</sup> Avenue in Clackamas County, Oregon ) **(Saranchuk)**

**I. SUMMARY**

1. The applicant, Ivan Saranchuk, submitted an application requesting approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events.

a. The applicant proposes to locate the facility on a four-acre parcel located at 10611 SE 232<sup>nd</sup> Avenue; also known as tax lot 101, Section 34B, Township 1 South, Range 3 East, of the Willamette Meridian, in Clackamas County (the “site”). The site is located in the southwest quadrant of the intersection of SE 232<sup>nd</sup> Avenue and SE Borges Road. The site and surrounding properties to the east, west, and south are zoned EFU (Exclusive Farm Use). Properties to the north, across SE Borges Road, are zoned TBR (Timber). The site is currently developed with a single-family residence and shop in the north portion of the site, each with its own driveway access to SE 232<sup>nd</sup> Avenue. There is another, unpermitted, driveway accessing SW Borges Road, which the applicant will be required to close. A stream that the Statewide Wetland Inventory identifies as a freshwater forested/shrub wetland and unnamed riverine resource crosses the southwest corner. The site is located within the Portland Metropolitan Urban Growth Boundary (the “UGB”).

b. The applicant proposes to conduct weddings and similar events in a 7,445 square foot “permanent tent” and a 1,082 square foot outdoor patio located near the west central portion of the site. (Exhibit 1 at 1 and 13). The applicant proposed to provide 172 parking spaces on the site, accessed by a third driveway onto SE 232<sup>nd</sup> Avenue. The proposed tent structure, parking, and access drives will consume the majority of the undeveloped upland portions of the site. (Exhibit 2 at 10).

c. The applicant proposes to host a maximum of 104 events per calendar year with a maximum of 300 guests per event. The events will take place exclusively inside the proposed tent and associated patio. The applicant will conduct office activities related to the use within the existing residence.

2. County staff recommended the hearings officer deny the application based on the findings in the Staff Report to the Hearings Officer dated January 3, 2024 (Exhibit 1, the “Staff Report”).

3. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about this application. The applicant’s representative testified in support of

the application. Four persons testified orally in in opposition to the application. Other persons testified in writing. The principal contested issues in the case include the following:

a. Whether the proposed use is allowed as a conditional use in the EFU zone, ZDO 1203.03(A);

b. Whether the characteristics of the site are suitable for the proposed use, ZDO 1203.03(B);

c. Whether the transportation system is safe and adequate to serve the proposed development (ZDO 1203.01(C) and 1007);

d. Whether operation of the proposed use will “[a]lter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the underlying zoning district,” ZDO 1203.01(D), specifically due to the following impacts:

i. Noise

ii. Traffic;

iii. Lighting;

iv. Trespass and litter;

v. Fire hazard;

vi. Drugs and alcohol;

vii. Groundwater;

v. Prior violations and whether the County can ensure compliance with the conditions of approval;

e. Whether the proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use. ZDO 1203.03(E);

f. Whether the County can ensure compliance with the conditions of approval.

g. Whether the proposed permanent tent structure is a building normally associated with uses permitted in the EFU zoning district. ZDO 806.01(C);

h. Whether the applicant demonstrated that it is feasible to operate the facility in compliance with the noise level limits of ZDO 806.02(J);

- i. Whether portable restrooms can be used on this site. ZDO 806.02(L); and
- j. Whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest. ZDO 401.05(A).

4. Based on the findings and discussion provided or incorporated herein, the hearings officer finds that the applicant failed to bear the burden of proof that the proposed use can comply with the applicable approval criteria of the Clackamas County Zoning and Development Ordinance (the “ZDO”). Therefore, the hearings officer must deny the application, Case No. Z0367-23-C (Saranchuk).

## **II. HEARING AND RECORD HIGHLIGHTS**

1. The hearings officer received testimony at public hearings about this application on January 11, 2024. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearings.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation (Exhibit 10). She noted that three persons submitted written testimony in opposition to the application. (Exhibits 5-7).

a. She noted that the applicants propose to operate an event facility on the roughly four-acre site. The applicant proposes to conduct up to 104 events per year with a maximum 300 persons per event during the summer months and smaller, 150 person average, events during the remainder of the year. The applicant proposed to conduct the events inside a 7,445 square foot permanent tent which the applicant has constructed on the site and on a 1,082 square foot outdoor patio at the west end of the tent.

b. The site is served by an existing groundwater well and septic system, neither of which are proposed to serve the event use. The applicant proposed to use portable restroom facilities and event caterers will provide any needed water. The County soils division noted that the proposed permanent tent structure will require permanent restrooms. (Exhibit 3). However, a separate restroom facility is not a “building normally associated with uses permitted in the [EFU zone]” (CCC 806.02(C)), as it is not needed to support farm workers on this four-acre parcel. Although ZDO 806.02(L) allows portable restroom facilities, subsection (2) requires compliance with “[t]he applicable regulations of the Oregon Department of Environmental Quality” and presumably those regulations require permanent restrooms for permanent buildings, based on the soils division’s comments. Therefore, proposed condition of approval III.14 should be modified to require approval from the County soils division for the use of portable restrooms.

c. The site is located inside the UGB. Therefore, CCC 1006.02 requires street lights.

d. The applicant submitted a preliminary statement of feasibility from the County transportation and engineering division, the surface water management authority for this area. However, the applicant did not submit a surface water management plan. Therefore, it is not clear how the applicant will manage surface water runoff from the site in compliance with ZDO 1006.06.

e. The applicant failed to demonstrate that the proposed permanent tent structure is a “building normally associated with uses permitted in the [EFU zone].” (CCC 806.02(C)).

f. The applicant failed to demonstrate that “The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located”. (CCC 1203.03(D)). Noise and lights from events on the site are likely to impact adjacent properties, as the applicant proposed to locate parking areas, drive aisles, and the outdoor patio abutting adjacent properties. There are no existing or proposed plantings or fencing to buffer adjacent properties from activities on the site.

f. The applicant failed to demonstrate that “The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan. (CCC 1203.03(E)). The applicant submitted information about the Comprehensive Plan but did not address any specific policies or address consistency with the plan.

g. The site is located in the Damascus groundwater limited area. The applicant proposed to have caterers provide water for events on the site. A condition of approval is warranted to that effect if the application is approved.

h. Because the site is located inside the UGB, ZDO 1015.01(A) requires that all parking, loading, and maneuvering areas be “hard-surfaced”, unless a permeable surface is required for surface water management. The County transportation engineering division will determine what constitutes “hard-surfaced” through the development review process.

3. Engineer Paul Williams appeared on behalf of the applicant Ivan Saranchuk.

a. He testified that the applicant intends to conduct an average of eight events per month, with more events in the summer and fewer during the winter. Events will include weddings and similar gatherings.

b. The applicant has installed a permanent tent on the site for events. There are similar tent structures elsewhere in the area. A neighbor uses a tent structure to store trees and protect them from adverse weather. Similar structures are used for farming on

properties south of the site. Tents are also available for agriculture and other permitted uses.

c. The applicant will submit a stormwater and erosion control plan demonstrating compliance with County standards through the subsequent development review process.

d. The County transportation division determined that the existing road system can accommodate traffic from this development. The applicant will demonstrate compliance with sight distance requirements through the development review process.

e. The applicant will submit a photometric plan demonstrating compliance with the lighting requirements of ZDO 806.02(I) and 1005.04(A).

f. There is existing heavy vegetation on the south and west boundaries of the site that will screen lights and mitigate noise. The applicant can provide additional vegetation as necessary to screen the site.

g. He requested the hearings officer hold the record open for one month to allow the applicant to address issues raised in the Staff Report and public testimony. He agreed to toll the 120 day clock to accommodate a seven week open record period and agreed to submit a written statement to that effect.

4. Carolyn Morrison noted that there is an existing event venue roughly ½ mile east of the site and noise from that venue is clearly audible on her property, located directly north of the site. The site is likely to have much greater noise impacts, given its proximity to her property. Noise will alter the character of the area, which is currently a “quiet forested environment.” Noise also impacts animals and birds in the area. This area is identified as an area of moderate fire hazard. Cigarettes and auto exhaust pipes could start a fire on the site. She recently found a burned out Chinese lantern on her property.

5. Lanai Walker testified that she resides on the property south of the site. Noise from past events on the site is “out of control.” The applicant has set up a “stadium sound system” on the site. Noise from the site is very loud, it causes visible vibrations in her drink inside her home. The sound has been loud enough to triggered car alarms.

6. Andrea Houck testified on behalf of the Damascus CPO. The applicant is currently operating the use illegally and the CPO has received many complaints about events on the site in the past year. The applicant has allowed helicopters to fly in and out of the site during events. The applicant threatened a neighboring farmer who was planting his fields during an event on the site. She questioned how the County will ensure compliance with any conditions of approval imposed on the application.

7. Jeannette Blackwell testified that she can hear noise from the site on her property, located one mile away. There is a school north of the site that will be impacted by noise from the site. 300 person events on the site will generate a significant amount of traffic at night, which is not typical for the area. Vehicles parking on grass pose a significant risk if

fire. The applicant is not using the tent on the site as a greenhouse; it is only for events. Eight events per month would allow events on every weekend during the summer.

8. At the conclusion of the hearing the public hearing, the hearings officer held the record open for seven weeks, subject to the following schedule:

a. For five weeks, until 4:00 p.m. on February 12, 2024, for all parties to submit additional testimony and evidence;

b. For an additional two weeks, until 4:00 p.m. on February 26, 2024, for all parties to respond to the whatever was submitted during the first weeks; and

c. For a seventh week, until 4:00 p.m. on March 4, 2024, for the applicant to submit a final argument.

25. Exhibits 8, 9, and 11 through 16 were submitted during the open record period.

### **III. DISCUSSION**

#### **1. ZDO Section 1203.02 CONDITIONAL USES**

##### ***1203.02: SUBMITTAL REQUIREMENTS***

**Finding:** This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and a vicinity map. One Preliminary Statement of Feasibility (Exhibit 3) was submitted, for surface water management. All the submittal requirements under Subsection 1203.02 are included in the application. The application was originally submitted on September 14, 2023, and additional information was submitted on November 8, 15, and 16, 2023 (Exhibits 2a-2c). Following the submission of additional requested information, the application was deemed complete on November 20, 2023.

The 120-day deadline for processing this application would have expired on March 19, 2024 (Exhibit 2 at 3). However, at the conclusion of the hearing the applicant's representative orally agreed toll the 120-day clock for seven weeks to accommodate the applicant's request to hold the record open to submit additional written testimony and evidence in response to the Staff Report and public testimony. The applicant also agreed to submit a written statement to that effect. The applicant's subsequent refusal to submit the written statement (Exhibit 12) is not sufficient to overcome the applicant's express agreement to toll the clock. The hearings officer relied on the applicant's agreement to allow the applicant a one-month initial open record period. Absent that agreement, the hearings officer would have limited the duration of the open record period at the hearing.

**The submittal requirements of Subsection 1203.02 are met.**

- b. **1203.03 GENERAL APPROVAL CRITERIA:** *A conditional use requires review as a Type III application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:*

- A. *The use is listed as a conditional use in the zoning district in which the subject property is located.*

**Finding:** The site is zoned Exclusive Farm Use (EFU). ZDO 401 controls land uses in the underlying EFU zoning district; Table 401-1 lists the uses which are allowed, including “home occupation to host events, subject to section 806” and 401.05(A)(1) & (D)(1) as a conditional use. The applicant proposes to operate a home occupation to host events; therefore, a conditional use permit is necessary. The standards of section 806 are discussed below.

Several persons argued that this type of event facility should not be allowed in the rural area. However, Section 401 expressly allows this type of use in the EFU zone, provided the use complies with all applicable approval criteria. State law expressly authorizes the county to allow such uses in any zone. *See* ORS 215.448. The decision to allow this type of use in the EFU zone was a policy choice by the Board of County Commissioners, which the hearings officer has no authority to review or reconsider in this proceeding.

**This criterion is met.**

- B. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

**Finding: Size:** The subject property is approximately four-acres in size. The submitted site plan demonstrates the property is of sufficient size to accommodate the proposed event area, along with parking and circulation area, landscaping, etc. However, the size of the site is a limitation to the proposed event venue due to the proximity of adjacent properties and the resulting impacts the venue would have on the adjacent properties. As discussed below, the hearings officer finds that the size of the site is a limiting factor when considering the suitability of the proposed event venue.

**Shape:** The shape of the subject property is rectangular with an area cut out for a separate dwelling on an adjacent lot, 23122 SE Borges Road. This shape does not present any particular limitation to the proposed use of the site based on the submitted site plan.

**Topography:** The subject property is relatively flat and thus topography does not appear to be a limiting factor.

**Location:** The site is located between the community of Boring to the east and Happy Valley to the west, north of Highway 212. Land use here is mixed, including farming to rural residential uses on acreage properties. The location map submitted by the applicant indicated there is a school across Borges Road from the site. Opponents expressed concerns with the safety of the intersection of SE 242<sup>nd</sup> Avenue and Borges Road,

arguing that it is a “high crash intersection.” (Exhibit 8). However, County engineering staff reviewed these intersections and determined that the existing transportation will operate safely with additional traffic from this event facility.

However, the homes on the properties to the north, west, and south are located in relatively close proximity to the boundaries of the site. (Exhibit 2 at 8). As discussed below, the hearings officer finds that the location of the site is a limiting factor when considering the suitability of the proposed event venue.

In addition, many of the surrounding properties are being farmed (Exhibit 1 at 12, Exhibit 2 at 8, and neighbor’s testimony). The applicant failed to provide any evidence regarding those farm operations and how activities on the site will not create the potential for conflict with those agricultural uses.

Natural Features: There is a wetland in the southern portion of the site, but the applicant’s site plan demonstrates compliance with setback requirements.

Summary: The shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed use. The size and location of the site pose challenges to the suitability of the subject property for hosting events due to the impacts the event will have on the surrounding residential and agricultural properties. As noted above, due to the shape and location of the site the event facilities will be located very close to abutting properties with little or no separation, which will increase the impact of event noise and activity on adjacent properties and the applicant failed to provide any evidence regarding agricultural activities on surrounding properties.

When considering all of the characteristics of the subject property, the hearings officer finds that this criterion is not met due to the size and location of the property and the proximity of neighboring residences and agricultural uses.

**This criterion is not met.**

*C. The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.*

*1. Subsection 1007.07: Transportation Facilities Concurrency*

*a. Subsection 1007.07(A): “Shall apply to the following development applications :design review, subdivisions, partitions, and conditional uses.”*

*b. Subsection 1007.07(B): Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*

**Finding:** As discussed below, this application for a home occupation to host events is exempt from the concurrency requirements of ZDO 1007.07.



2. *Safety:*

- a. *Subsection 1007.02(D): “Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*
  - i. *No planting, signing, or fencing shall be permitted which restricts motorists’ vision; and*
  - ii. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.”*

**Finding:** The hearings officer finds that the safety of the transportation system is adequate to serve the proposed use, based on the expert testimony of County transportation staff. (Exhibit 4). Neighbors testimony to the contrary is not sufficient to overcome the expert testimony of County engineering staff. Weddings and similar events generate a larger number of vehicles on days when an event occurs than are typically on the roadway. However, the average number of vehicle trips over the course of the entire year, assuming smaller events in the winter, would be approximately 8,000 to 10,000 trips, which is equivalent approximately 2-3 single family homes. Based on the limited number of annual trips generated by the event use, the existing right-of-way and roadway are adequate to support the proposed event use.

Any increase in traffic will pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. But it will not substantially limit, impair or preclude the use of surrounding properties for permitted uses. Traffic generated by this use will not substantially limit, impair or preclude operation of the existing school north of the site as most events on the site will occur in the evenings, on weekends, and during the summer months when school is not in session.

Neighbors testified that vehicles parked on SE 232<sup>nd</sup> Avenue during past events on the site, narrowing the roadway and blocking traffic during events on the site. With this application the applicant proposes to provide sufficient parking on the site to accommodate the maximum number of guests and employees allowed. The applicant proposes to widen the access drive and provide parking spaces accessed by 24-foot wide drive aisles to accommodate two-way traffic. These improvements will allow guest vehicles to quickly enter the site and park, eliminating bottlenecks that caused traffic backups on SE 232<sup>nd</sup> Avenue. In addition, ZDO 806.02(K)(1) prohibits on-street parking on event days.

Neighbors expressed concerns with speeding traffic, “burnouts”, and other illegal traffic maneuvers. However, there is no evidence in the record that these activities are directly

related to events on the site. Reasonably prudent drivers will observe the posted speed limit and further reduce their speeds to accommodate road conditions such as narrow pavement or the presence of pedestrians and animals. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

**This criterion is met.**

*D. The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.*

**Finding:** The applicant is correct that this criterion does not require that the use have no impacts at all. Any new use or development will alter the character of the area to some extent by modifying existing views, generating additional traffic, installing new light sources, increasing noise, etc. The Code only prohibits impacts that *substantially* limit, impair or preclude the use of surrounding properties for the allowed primary uses, e.g. farm and forest activities. (Emphasis added). The Code does not define the word “substantially.” Therefore, the hearings officer must look to the plain and ordinary meaning of that term. *Sarti v. City of Lake Oswego*, 106 Or. App. 594, 597, 809 P.2d 701 (1991). Random House Unabridged Dictionary defines “substantial” as “by an ample or considerable amount; quite a lot.” “Substantial.” In Dictionary.com, Retrieved March 12, 2023, from <https://www.dictionary.com/browse/substantially>.

### Noise

The hearings officer finds that noise levels that exceed the limits in ZDO 806.02(J) will substantially limit, impair or preclude the use of surrounding properties allowed uses. This section prohibits average peak sound pressure levels in excess of 60 dBA measured off the subject property.

The applicant analyzed noise generated on the site, placing a speaker within the tent on the site and measuring sound levels at various points on the property to determine the maximum noise level within the tent that would still meet the noise limits of the Code. The applicant concluded that limiting sound levels inside the tent to 85 dB will ensure that sound levels at the site boundaries will not exceed 60 dB. (Exhibit 16 at 2 and 9). The applicant argued that 85 dB “[g]reatly exceeds what is proposed for gatherings within the tent. Conversations cannot be comfortably held at this volume and communication must be shouted, which is not typical of a wedding or gatherings. The actual sound level will be lower than this test during the proposed events...” However, this conflicts with neighbors’ testimony about sound levels generated during prior events on the site.

The applicant’s noise analysis also failed to analyze the applicant’s existing sound system. The analysis utilized a single speaker located in the center of the tent. Neighbors testified that the applicant uses a “sound system” on the site, which presumably includes multiple speakers throughout the tent. Speakers located at the west end of the tent, closer to abutting properties,

will generate greater offsite noise impacts than a single speaker located near the center of the structure.

In addition, the applicant's noise study failed to consider the impact of outdoor activities on the site, on the proposed "patio" at the west end of the tent, which is located roughly 18 feet from the west boundary of the site, and in the parking areas throughout the site, with parking spaces and access drives located even closer to the site boundaries. (Exhibit 2 at 7). Sounds of guests and/or employees talking loudly while organizing and directing members of the wedding party for photos, vocally celebrating, arguing, car radios playing, slamming car doors, etc. may exceed the maximum noise levels allowed by ZDO 806.02(J).

The applicant states that "There is 6' opaque fencing or substantially opaque vegetative screening existing along the majority of the project's boundary where parking is proposed." (Exhibit 16 at 2). However, the applicant failed to provide any photographs or other evidence demonstrating the type of fencing or its effectiveness at mitigating noise. The applicant also notes "[a]n already-planted vegetative buffer..." around the tent with the portion abutting the west boundary extending some distance south of the tent. (Exhibit 16 at 2 and 10). Although this vegetation is intended to continue to grow and mature over time, it is currently relatively sparse and unlikely to provide significant noise mitigation.

Noise generated by vehicles entering or exiting the site is exempt from the noise standards of ZDO 806.02(J)(1). ZDO 806.02(J)(1)(a).

Helicopters landing and taking off from the site would likely exceed the noise limits of the Code, as well as potentially violating FAA regulations, and would be prohibited if this application were approved.

### Traffic

The hearings officer finds that traffic generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties. As transportation staff noted, adequate sight distance can be provided at the site access onto SE 232<sup>nd</sup> Avenue and traffic generated by the proposed use will not create a hazard.

### Lighting

It is feasible to design and locate any outdoor lighting on the site to comply with ZDO 806.02(K) and ZDO 1005.04(A). The proposed drive aisles and parking spaces on the site will direct vehicle headlights towards the boundaries of adjacent properties. (Exhibit 2 at 10). The applicant argued that existing fencing on the perimeter of the site will shield adjacent properties from the headlights of vehicles parking and maneuvering on the site. However, as noted above, the applicant failed to provide any information about the type of "opaque" fence. The applicant also acknowledged that the existing fence does not screen the entire parking area. But the hearings officer finds that it is feasible to install fencing, vegetation, or other measures to screen the headlights of vehicles parking and

maneuvering on the site. A condition of approval would be warranted to that effect if this application were approved.

### Trespass and litter

The proposed facility will attract additional people to the area, which will increase the risk of trespass, litter, and similar impacts. However, there is no evidence that this will substantially impact the area. Perimeter fencing or landscaping necessary to shield vehicle headlights will clearly identify the boundaries of the site and limit guests ability to access adjacent properties. The owners of abutting properties have adequate legal (civil) recourse to address any trespass problems that may arise. Perimeter fencing will also prevent litter generated on the site from blowing onto adjacent properties. The applicant can be required to pick up litter on the site immediately after events to ensure compliance with the “appearance” standard of ZDO 806.02(O).

### Fire Hazard

The hearings officer finds that smoking on the site will not substantially increase the risk of fire in the area. Most activities will take place within the tent structure and outdoor patio, or in the “hard-surfaced” parking lot. Smoking may increase the risk of fire due to the potential for improperly discarded cigarettes and matches. However, this risk already exists, as residents of this site and surrounding properties may choose to smoke.

Although the proposed use will increase the number of potential smokers it will not otherwise substantially increase the risk of fire. In addition, it is in the applicant’s best interest to prohibit smoking outside of designated areas on the site in order to prevent damage to the site. A condition of approval would be warranted prohibiting the use of fireworks, torches, lanterns, and other sources of open flame if this application is approved.

The site is located within the UGB. Therefore, all areas used for the vehicle parking and maneuvering areas must be “hard surfaced.” ZDO 1015.01(A). Parking on grass is prohibited.

### Drugs and alcohol

The applicant can regulate or prohibit alcohol and prohibit marijuana use on the site. Some attendees may bring their own or otherwise consume excessive amounts of these substances, which could create a hazard if those attendees attempt to drive home. However, the applicant will have a strong interest in monitoring and enforcing limits on consumption and stopping intoxicated patrons from driving, in order to avoid legal liability. There is no evidence that this use will generate a substantially higher risk of impaired drivers than any other business that serves alcohol or anywhere people consume marijuana.

### Groundwater

The applicant proposed to require caterers to supply water for events on the site. No groundwater use is proposed for event services.

### Prior violations

Allegations of past violations by the applicant (conducting unpermitted events) are not relevant to the applicable approval criteria for this application. The applicant's past behavior does not show that he cannot or will not operate the use in a manner that complies with the ZDO. If the applicant sustains the burden of proof that the application complies with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must as a matter of law approve the application subject to those conditions, ORS 197.522(4).

If the application is approved, the hearings officer would impose conditions of approval requiring ongoing compliance with all applicable approval criteria. It would be in the applicant's best interest to comply with those conditions, as failure to do so can be a basis for enforcement, including modification or revocation of the CUP. The County will monitor and enforce the permit. The County's Community Environment Section exists for the purpose of identifying, responding to, and remedying alleged violations of County land use decisions and codes. Neighboring residents can assist in the enforcement process by reporting any violations they observe. If the applicant fails to comply with the conditions of approval, i.e., by exceeding the hours of operation, guest limits, maximum noise levels, or otherwise expanding or changing the use, the planning director may initiate proceedings to revoke the permit. But the hearings officer cannot assume that the applicant will not comply and deny the application on that basis.

The fact that neighbors can assist in monitoring the use does not shift the responsibility to them to do so. The County continues to bear the responsibility for enforcing its laws. However neighbors may be in a better position to monitor the use on a continuing basis because of their proximity, and it may be in their interests to do so given the complaint-driven nature of the enforcement process.

### **This criterion is not met.**

*E. The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.*

**Finding:** The original application addressed several general, non-agricultural, Comprehensive Plan policies. (Exhibit 2 at 19). Staff cited the following relevant agricultural policies from Chapter 4 of the Comprehensive Plan:

#### *4.NN Agriculture Policies*

*4.NN.1 The following areas shall be designated Agriculture:*

*4.NN.1.1 Areas with predominantly Class I through IV agricultural soil as defined by the United States Natural Resources Conservation Service or identified as agricultural soil by more detailed data;*

*4.NN.1.2 Areas generally in parcels of 20 acres or larger;*

- 4.NN.1.3 *Areas primarily in agricultural use;*
- 4.NN.1.4 *Areas necessary to permit farming practices on adjacent lands or necessary to prevent conflicts with the continuation of agricultural uses;*
- 4.NN.1.5 *Other areas in soil classes different from NRCS I through IV when the land is suitable for farm use as defined in Oregon Revised Statutes 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farm practices.*

The site is currently designated Agriculture and the applicant has not proposed to change that designation. Therefore, the hearings officer finds that the policies of Section 4.NN.1 are inapplicable to this application.

- 4.NN.2 *Agriculturally related industries shall be encouraged.*

The site is not currently used for agriculture and there is no evidence that it has been used for agriculture in the recent past. Therefore, provided the use does not conflict with agricultural uses on adjacent properties the use is consistent with Section 4.NN.2, as it will not discourage any agriculturally related industries.

- 4.NN.3 *Land uses that conflict with agricultural uses shall not be allowed.*

The proposed home occupation to host events is allowed as a conditional use in the EFU zone. Therefore, the hearings officer cannot find that the proposed land use will *per se* conflict with agricultural uses. The proposed use is consistent with Section 4.NN.3

**This criterion is met.**

- F.** *The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the site is located, and Section 1000 Development Standards.*

**Finding:** As noted above, the proposed home occupation event facility is allowed as a conditional use in the EFU zone, subject to the criteria in ZDO 806, which are addressed below. Applicable section 1000 Development Standards are also addressed below.

**This criterion is met.**

## 2. ZDO SECTION 1000 DEVELOPMENT STANDARDS

**Finding:** ZDO 1203.03(F) requires compliance with “[a]ny applicable requirements of ... Section 1000 Development Standards.” The hearings officer finds that the applicable sections of Section 1000 are limited to ZDO 1005.04(A), 1007.07, and 1015, as these are the only criteria mentioned in ZDO 806 or 1203.03.

The applicant is not required to demonstrate compliance with the remaining standards of ZDO 1000 in order to obtain approval of this application. But future development on the site will be required to comply with all applicable standards, such as the surface water management requirements of ZDO 1006.06.

ZDO 806.02(I) provides:

*Lighting: All lighting used during events shall comply with Subsection 1005.04(A).*

ZDO 806.02(K) provides:

*Parking: The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K).*

ZDO 1203.03(C) provides:

*The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.*

a. **1005.04 OUTDOOR LIGHTING**

A. *Outdoor lighting devices:*

1. *Shall be architecturally integrated with the character of the associated structures, site design, and landscape.*
2. *Shall not direct light skyward.*
3. *Shall direct downward and shield light; or direct light specifically toward walls, landscape elements, or other similar features, so that light is directed within the boundaries of the subject property;*
4. *Shall be suitable for the use they serve (e.g. bollard lights along walkways, pole mounted lights for parking lots);*
5. *Shall be compatible with the scale and intensity of uses they are serving. The height of pole-mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and*

6. *At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.*

**Finding:** There is no evidence regarding any existing or proposed lighting on the site. However, the hearings officer finds that it is feasible to design and locate lighting on the site, and to the extent necessary modify any existing lighting to comply with this standard.

**The lighting standards of Section 1005.04(A) can be met with conditions.**

b. **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

A. *Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*

B. *Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*

...

(5) *Home occupations to host events, which are approved pursuant to Section 806.*

...

**Finding:** The applicant is applying for a conditional use permit to operate a Home Occupation to Host Events which is a conditional use in the EFU zoning district. Under ZDO Section 1007.07(B)(5) home occupations to host events are exempt from concurrency requirements.

**This criterion is inapplicable, as the use is exempt from concurrency requirements.**

c. **1010 SIGNS**

**Finding:** Pursuant to Section 806.02(M), any signage associated with the Home Occupation to Host Events is subject to the applicable standards of Section 1010. The hearings officer finds that it is feasible to comply with these requirements.

**This criterion can be met with conditions.**

d. **1015 PARKING AND LOADING**

i. **1015.01 GENERAL STANDARDS**

**Findings:** The site is located within the UGB. Therefore, ZDO 1015.01(A) requires that all parking, loading, and maneuvering areas serving the event facility “[s]hall be hard-



surfaced, unless a permeable surface is required for surface water management pursuant to the regulations of the surface water management authority or in order to comply with Subsection 1006.06.” County transportation staff can address what is necessary to comply with the “hard-surfaced” standard through the development review process. However, the hearings officer notes that ZDO 1015.01(B) allows parking and maneuvering areas surfaced with “screened gravel or better”. Therefore, the hearings officer assumes that the “hard-surfaced” standard of ZDO 1015.01(A) requires parking and maneuvering areas within the UGB to be surfaced with pavement, concrete, or similar materials.

Table 1015-1 does not impose maximum parking limits on Home Occupation to Host Events. Therefore, ZDO 1015.01(C) is inapplicable.

Bicycle parking and loading areas are not required for this use. Therefore, ZDO 1015.01(D) is inapplicable.

The applicant did not propose to rent, lease, or assign parking on the site, use parking for storage, or for conducting business activities. A condition of approval is warranted to that effect to ensure compliance with ZDO 1015.01(E).

**This criterion can be met with conditions.**

iii. 1015.02 MOTOR VEHICLE PARKING AREA STANDARDS

**Findings:** Based on the applicant’s site plan (Exhibit 2 at 10) the proposed parking areas appear to meet the standards of ZDO 1015.02(A). Vehicle parking is located in clearly defined areas of the site. ZDO 1015.02(A)(1). All parking spaces appear to meet or exceed the dimensional requirements of the Code. ZDO 1015.02(A)(2). It is feasible to comply with the dimensional requirements of ZDO 1015.02(A)(2) and (3). It is also feasible to comply with the minimum dimensions for curb length, stall depth, and aisle width established by the Clackamas County Roadway Standards. ZDO 1015.02(A)(4). The applicant did not propose any double loaded parking spaces or address why it is not possible to do so. ZDO 1015.02(A)(b). The applicant could redesign the parking lot to comply with this standard, or demonstrate that it is not possible to do so, through the development review process if this application were approved.

ZDO Table 1015-1 requires a minimum one parking space per three guests and one additional parking space for each employee for the proposed Home Occupation to Host Events facility. There is no parking maximum for this type of use. The applicant proposes to allow a maximum 300 guests per event and up to five employees. Therefore, a minimum 105 parking space are required. The applicant proposes to provide 172 parking spaces. (Exhibit 2 at 10).

Bicycle parking and loading berths are not required for this use. ZDO Tables 1015-3 and 1015-4.

**This criterion can be met with conditions.**

iv. 1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

**Finding:** This Code section is not listed as an applicable section of Section 1000 in ZDO 1203.03(F) or 806.

**This criterion is inapplicable.**

3. ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

a. 806.02 STANDARDS

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

**Finding:** The site contains a lawfully established dwelling. The Applicant states he will reside full-time in the dwelling on the site.

**This criterion can be met with conditions.**

B. *Employees: The home occupation shall have no more than five employees.*

**Finding:** The definition of “Employee” under Section 806.01(A) is “Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the business. Except in the EFU, TBR, and AG/F Districts, this definition does not apply to persons employed by contract to provide services for a single event, such as caterers, photographers, and florists.” The site is zoned EFU. Therefore, the five employee limit applies to persons employed by contract to provide services for a single events. The applicant proposes to have no more than five (5) employees, which is within the permissible number of employees allowed for a home occupation.

**This criterion can be met with conditions.**

C. *Type of Buildings: 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 operator’s dwelling or other buildings normally associated with uses permitted in the applicable zoning district.*

**Finding:** The applicant states this home occupation will be operated substantially within the existing residence and accessory buildings on the site, primarily a 7,445 square foot “permanent tent”.

The hearings officer finds that the applicant failed to prove that a 7,445 square foot permanent tent is a “[b]uilding normally associated with uses permitted in the [EFU

zone]”. As the applicant notes, greenhouses are used on some surrounding properties. The applicant submitted a photo of this type of greenhouse, although it is unclear where it is located. (Exhibit 16 at 12). However, as staff noted, and the photo shows, greenhouses are designed and intended to allow sunlight to pass through into the interior. The applicant’s tent structure does not appear to allow as much light into the interior.

Staff’s observations of “smaller tents used as carports” (Exhibit 1 at 23) are inapplicable, as carports are generally associated with residential uses, which are not a permitted use in the EFU zone. In the hearings officer’s experience with prior applications, smaller tents have been used to provide shelter for farm workers. But there is no evidence that permanent tent structures of this size are “[n]ormally associated with uses permitted in the [EFU zone]”.

The Code does not define the term “normal.” Webster’s dictionary defines “normal” as “conforming to a type, standard, or regular pattern : characterized by that which is considered usual, typical, or routine.” (“Normal.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/normal>. Accessed 17 Mar. 2024.)).

The applicant submitted photos of two large tent structures. (Exhibit 16 at 11 and 13). However, although these tent structures could be used for permitted agricultural uses in the EFU district, there is no evidence in the record that these types of structures actually are “[n]ormally associated with uses permitted in the [EFU zone]”. (Underline added). It appears the applicant obtained these images from tent manufacturer’s websites and, based on the photos, neither structure appears to be put to agricultural use. The structure shown on page 11 is located on pavement in what appears to be an urban area, as several buildings are visible in the background of the photo. The structure shown on page 13 is located on large gravel area adjacent to a communications or electrical transmission tower. In addition, unlike the applicant’s tent, this structure is fully enclosed with solid walls and doors, with no windows. The applicant’s tent has extensive windows and is made of separate panels that can be opened to limit or eliminate enclosing walls. The applicant did not provide any evidence of this type of large tent structure being used for agricultural purposes in Clackamas County. If this type of structure were “normally” (“usual, typical, or routine”) used in agriculture or other permitted uses in the EFU zones, the applicant would presumably have been able to provide evidence of such use. The hearings officer finds that the applicant failed to demonstrate compliance with this criterion.

**This criterion is not met.**

**D. Tents: Temporary tents are allowed as follows:**

1. *In the AG/F, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C).*

2. *In a zoning district other than AG/F, EFU, and TBR, one temporary tent is permitted, and additional temporary tents may be permitted if consistent with Subsection 1203.03.*
3. *Temporary tents may be placed on the subject property no more than 24 hours before the event and must be removed no more than 24 hours after the event.*

**Finding:** This section allows temporary tents. The applicant proposed to utilize a permanent tent. Therefore, it is inapplicable to this application. In addition, this section requires that tents must be consistent with ZDO 806.02(C), which is not met based on the discussion above.

**This criterion is inapplicable.**

- E. *In the AG/F, EFU and TBR Districts, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.*

**Finding:** The site is located in the EFU zone. The impacts of the proposed use are addressed in the findings above addressing ZDO 1203.03(D). Those findings considered the impact of the use on dwellings. This Code section establishes a review standard. It does not include an approval criterion that must be met.

**This criterion is inapplicable.**

- F. *During the months of November through March, no event shall take place outside the hours of 9:00 A.M. to 10:00 P.M. During the months of April through October, no event shall take place outside the hours of 8:00 A.M. to 10:00 P.M. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.*

**Finding:** The applicant proposes to comply with these hours of operation. A condition of approval would be warranted if the application were approved.

**This criterion can be met with conditions.**

- G. *A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.*

**Finding:** The applicant proposes to comply with these restrictions, generally holding two events per week and a maximum total of 104-events per year. A condition of approval would be warranted if the application were approved. Although neighbors objected to the frequency of events, every weekend during the summer, that is what the Code allows.

**This criterion can be met with conditions.**

- H. A maximum number of guests for any single event is 300. However, to the extent necessary to comply with Subsection 1203.03, a lower limit may be imposed based on site capacity constraints.*

**Finding:** The applicant is proposing to host events with a maximum of 300 guests, per event This criterion is met as proposed.

**This criterion can be met with conditions.**

- I. All lighting used during events shall comply with Subsection 1005.04(A).*

**Finding:** The lighting standards of Subsection 1005.04(A) are addressed above. As discussed above, it is feasible to comply with this criterion.

**This criterion can be met with conditions.**

- J. Noise shall be regulated as follows:*

- 1. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level, when measured off the site, of noise created by the home occupation shall not exceed the greater of 60 dBA or the ambient noise level. During all other hours, the average peak sound pressure level, when measured off the site, of noise created by the home occupation shall not exceed the greater of 50 dBA or the ambient noise level.*

- a. Noise generated by vehicles entering or exiting the site, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1).*

- b. Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.*

- 2. A noise study may be required to demonstrate compliance with Subsection 806.02(J)(1). 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 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 discussed above, the applicant failed demonstrate that it is feasible to comply with the noise limits of the Code. The applicant’s acoustical analysis did not review noise generated outside of the proposed tent structure or the noise impacts of the applicant’s existing sound system and speaker locations.

**This criterion is not met.**

*K. The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K):*

- 1. On-street parking shall be prohibited on the day of an event.*

**Finding:** Neighbors testified about vehicles parked on SE 232<sup>nd</sup> Avenue and in an off-site field north of SE Borges Road during prior events on the site. However, the proposed parking lot can provide sufficient on-site parking to accommodate the largest events proposed (maximum 300 guests and five employees). There is no need for guests or employees to park on the street or on surrounding properties. The proposed parking lot, with clearly marked parking stalls, will ensure adequate parking is available on the site. A condition of approval would be warranted to prohibit on-street or off-site parking. If this application were approved.

**This criterion can be met with conditions.**

- 2. An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:*

- a. It is appropriate considering season, duration, and intensity of use.*
- b. It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.*
- c. In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the site. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.*

The applicant did not request an alternative parking area surface. The site is located within the UGB. Therefore, all parking areas on the site must be “hard surfaced” as required by Subsection 1015.01(A).

**These criteria are inapplicable.**

**L. Portable restroom facilities shall:**

1. *Include hand-sanitizing or hand-washing facilities;*
2. *Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality;*
3. *Be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings; and*
4. *Be located a minimum of 50 feet from all lot lines.*

**Finding:** The applicant proposes to use portable restroom facilities exclusively. However, the County Septic and Onsite Wastewater Program indicated that the proposed permanent tent structure will require permanent restroom facilities connected to permanent treatment systems. (Exhibit 3).

The County has approved the use of portable restroom facilities in prior applications with events occurring in permanent structures. See Z0151-23-C (Chateau De Lis). The applicant in that case initially proposed to provide permanent restrooms in a proposed permanent structure on the site. The applicant subsequently changed their proposal to eliminate the permanent facilities and utilize portable restrooms exclusively (Hearings Officer's Final Order Z0151-23-C (Chateau De Lis) at 41). Therefore, it is possible that that approval was in error as the Septic and Onsite Wastewater Program was not informed of that change.

Regardless, the applicant will need to obtain approval from the Septic and Onsite Wastewater Program prior to utilizing portable restrooms on the site. The hearings officer finds that it is feasible to apply for such approval. It is unnecessary for the hearings officer to find that approval of portable restrooms is feasible, because the restrooms will be subject to additional review pursuant to the Septic and Onsite Wastewater Program standards, including relevant provisions of state law. *Wal-Mart Stores, Inc. v. City of Bend*, LUBA No. 2006-040, 52 Or LUBA 261, 285–287 (2006).

**This criterion can be met with conditions.**

- M.** *One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010, Signs. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.*

**Finding:** The applicant states he will comply with these requirements.

**This criterion can be met with conditions.**

- N. *Equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days*

**Finding:** The applicant states he will comply with this requirement.

**This criterion can be met with conditions.**

- O. On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a primary use in the subject zoning district, or, in the AG/F, EFU, and TBR Districts, for a use identified as “allowed” by Table 407-1, Permitted Uses in the AG/F District, 401-1, Permitted Uses in the EFU District, or 406-1, Permitted Uses in the TBR District, respectively.

**Finding:** The applicant states that he will comply with this criterion.

**This criterion can be met with conditions.**

#### 4. ZDO SECTION 401 EFU DISTRICT

- a. *401.02 Uses Permitted. Table 401-1 lists “Home Occupation to Host Events, subject to Section 806” as a conditional use.*

**Finding:** As established in Table 401-1, a Home Occupation to Host Events is a Conditional Use and is subject to Section 806. The application is also subject to 401.05(A)(1). The applicant is proposing to host events on site. The applicant has applied for a conditional use permit.

**This criterion is met.**

- b. *401.05 Approval criteria for specific uses, provides, in relevant part:*

*The following criteria apply to some of the uses listed in Table 401-1, Permitted Uses in the EFU District. The applicability of a specific criterion to a listed use is established by Table 401-1.*

A. General Criteria:

1. *Uses may be approved only where such uses:*

- a. *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*



- b. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

...

**Finding:** The applicant’s unsupported assertions that “The proposed use will not force a significant change in practices on surrounding lands” (Exhibit 2 at 16) and “The project causing no substantial impacts to neighboring properties will preclude the use from causing any significant increase in the cost of accepted farm or forest practice on surrounding lands...” (Exhibit 16 at 4) is not sufficient to address these criteria. The applicant failed to provide any analysis of farming operations and activities in the area or address how the proposed use will not impact those operations and activities.

The majority of events on the site are proposed to occur between late spring and fall, during planting and harvesting seasons when agricultural activities are most likely to occur. This increases the potential for conflicts between the proposed use and those agricultural activities.

The applicant proposed to provide 172 parking spaces on the site. All vehicles must enter or leave the site via a single driveway onto SE 232<sup>nd</sup> Avenue. As noted in the Staff Report, this road also provides access to seven other properties that appear to be used for farming, which together constitute 86 acres of farmland. 172 vehicles entering or leaving the site around the same time will not exceed the capacity of this roadway. But it could create congestion that may potentially preclude the road from being used by the farmers when a wedding is convening or letting out, thereby impacting farm operations by limiting the movement of farm products on this road.

Farming activities on surrounding properties may generate noise, dust, odors, and other impacts that may interfere with weddings and other events on the site, leading to potential confrontations between event guests and farmers. Neighbors testified that the applicant previously threatened a neighboring farmer who was planting his fields during an event on the site.

It may be feasible to address these potential conflicts. But the applicant failed to make any effort to describe agricultural activities in the area, potential conflicts with such activities, and how they may be avoided.

**This criterion is not met.**

*D. Commercial Uses:*

- 1. The home occupation shall not unreasonably interfere with other uses permitted in the EFU District and shall not be used as justification for a zone change.*

**Finding:** The applicant is not requesting a zone change. However, as discussed above, the applicant failed to demonstrate that the proposed home occupation will not unreasonably interfere with other permitted uses in the EFU zone.

**This criterion is not met.**

- c. **401.07 Dimensional Standards** establishes the following minimum dimensional standards in the EFU district:
  - i. 30 feet from the front property line;
  - ii. Ten feet from the side property lines; and
  - iii. 30 feet from the rear property line for accessory structures

**Finding:** The proposed accessory building is subject to the minimum setback standards in the EFU district. The applicant's site plan demonstrates that it is feasible to comply with these standards. The County can ensure such compliance through the building permit review process.

**This criterion is not met.**

#### **D. CONCLUSION**

Based on the findings and discussion provided or incorporated herein, the hearings officer finds that the applicant failed to bear the burden of proof that the proposed use can comply with the applicable approval criteria. Therefore, the hearings officer must deny the application, Case No. Z0367-23-C (Saranchuk).

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby denies Case No. Z0367-23-C (Saranchuk).

DATED this 18th day of March 2024.



Joe Turner, Esq., AICP  
Clackamas County Land Use Hearings Officer

## **APPEAL RIGHTS**

ZDO 1307.14(D)(6) 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 an 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 will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).