

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

Regarding an Application for a Conditional	)	<b>Case File No.</b>
Use Permit to Add Additional Structures and	)	<b>Z0404-20-C</b>
Improvements to the Phillip Foster Farm.	)	<b>(Phillip Foster Farm)</b>

**A. SUMMARY**

1. The applicant and owner is the Jacknife-Zion-Horse Heaven Historical Society.
2. The subject property is located at 22725 Southeast Eagle Creek Road, Eagle Creek, OR. The legal description is T2S, R4E, Section 31A, Tax Lots 2401 and 2404, W.M. The subject property is approximately 5.23 acres and is zoned RI – Rural Industrial and RRFF-5 – Rural Residential Farm Forest 5-Acre.
3. On November 24, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on November 24, 2020. 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 on the Zoom platform due to the corona virus. 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 Hearings Officer stated that the only relevant criteria were those identified in the 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 Clay Glasgow discussed the staff report and recommended approval of the application.
3. David Piper and Jack Scott testified in support of the application.

4. No one testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

### C. FACTS

The subject property is an approximately 5.23-acre parcel split zoned RI and RRFF-5. The proposed development would all occur on the RI portion of the parcel. The subject property is located at 22725 Southeast Eagle Creek Road, Eagle Creek, OR, on the west side of Southeast Eagle Creek Road at the intersection with Highway 211. The Eagle Creek Foundry is located to the west and south. There are pockets of rural commercial zoning and uses scattered throughout along both Highway 211 and Southeast Eagle Creek Road. There is commercial farming to the west across Highway 224. The larger area is generally residential in nature. The site is the remaining part of the Phillip Foster Farm, which is a historic site located near the end of the Oregon Trail. Phillip Foster was a very influential man in early Oregon affairs as the staff report recounts. The property is generally flat and devoid of natural features. There are several historic structures on the property, including two homes, a barn, and blacksmith shop that are open to the public for tours. The application seeks to further develop the property with a sawmill, schoolhouse, visitor center, and modifications to five existing structures.

### D. DISCUSSION

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. The findings in the staff report are not challenged. It would be a waste of the County's money and resources to review and repeat all of the findings in the staff report. I have reviewed the findings in the staff report and I agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision.

All of the applicable approval criteria are satisfied.

### E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0404-20-D, with the following conditions of approval.

### F. CONDITIONS OF APPROVAL

#### I. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s). No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Wendi Coryell, Clackamas County at (503) 742-4657.
- 3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi Coryell may be contacted at (503) 742-4657 or [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us) . The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) **Prior to issuance of building permits for Visitor's Center,** County Septic and Onsite Wastewater Program shall approve septic (holding tank) for the facility.
- 4) If approved, the conditional use is valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
  - a. A building permit for a new primary structure that was part of the conditional use approval; or
  - b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

**II. Planning and Zoning Conditions:** Clay Glasgow, (503) 742-4520, [clayg@clackamas.us](mailto:clayg@clackamas.us)

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances discussed throughout this decision.
- 2) *Prior to development, this proposal shall be considered and approved by the Historic Review Board, to include Design Review.*
- 3) Outdoor lighting shall be located and designed so that it does not shine onto adjacent properties or right-of-ways.

**III. Building Code Division Conditions:** Richard Carlson, (503) 742-4769, [richardcar@co.clackamas.or.us](mailto:richardcar@co.clackamas.or.us)

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and received final occupancy approval.
- 2) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

**IV. Engineering Division Conditions:** Ken Kent, (503) 742-4763, [kenken@clackamas.us](mailto:kenken@clackamas.us)

- 1) All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with *Clackamas County Roadway Standards*.
- 2) Prior to the issuance of a building permit and/or site development, the applicant shall submit to Clackamas County Engineering Office:
  - a) Written approval from Molalla Fire District #73 for the planned access and circulation. The approval shall be in the form of site stamped and signed by the Fire Marshal.

Written approval for ODOT for the existing gated emergency vehicle access to Highway 211.

DATED this 30<sup>th</sup> day of November, 2020.



Fred Wilson  
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 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 the decision (which date appears above my signature).