

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

Regarding an Application for a Conditional Use)	Case File No.
Permit to Host Events on Exclusive Farm Use)	Z044-20-C
Land.)	(Thompson)

A. SUMMARY

1. The applicant and owner is Dan Thompson.
2. The subject property is located at 26480 Southwest Wilken Lane, West Linn, OR 97068. The legal description is T3S, R1E, Section 08, Tax Lot 200, W.M. The subject property is approximately 68.42 acres and is zoned EFU – Exclusive Farm Use.
4. On May 21, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the close of the public hearing, the record was left open two weeks for the submission of new evidence, testimony, and argument; two additional weeks for responses to the new evidence, testimony, and argument; and one additional week for the applicant’s final legal argument.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on May 21, 2020. All exhibits and records of testimony are filed with the Planning Division, 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 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.
3. Hallie King and Dan Thompson testified in support of the application.
4. A number of neighbors testified in opposition to the application.

5. At the conclusion of the public hearing, the Hearings Officer closed the public hearing and left the record open as discussed earlier.

C. FACTS

The subject property is an approximately 68.42-acre parcel zoned EFU. The property is located at 26480 Southwest Wilken Lane, West Linn, OR 97068. The subject property is located at the intersection of Southwest Wilken Lane (Wilken Lane), which runs north to south along the west of the property, and Southwest Homesteader Road (Homesteader Road), which runs east to west along the north of the property. The property has a large single family dwelling, often referred to as the castle, as well as out buildings including a garage/shop where many of the activities would take place. The property is also in hay/pasture use. The property is in an area of other EFU properties and Rural Residential Farm Forest – 5 Acre (RRFF-5) properties that are mainly in agricultural and rural residential use. A nearby property, referred to as The Polo Grounds, conducted unauthorized events and activities that generated substantial opposition from neighbors before being shut down. The applicant originally proposed to host up to 50 events (primarily weddings) per year with up to 300 guests. The applicant first reduced the request to 25 events per year with up to 200 guests, but now the applicant has further reduced the request to 15 events per year with up to 100 guests.

D. DISCUSSION

The staff report explains that all of the applicable approval criteria are satisfied or can be satisfied with more information and possible conditions of approval. The majority of 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 unchallenged findings in the staff report. I have reviewed the unchallenged 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, except as addressed further.

1. Conditional Use Approval Criteria

Clackamas Zoning and Development Ordinance (ZDO) 1203.03 provides the approval criteria for conditional uses. ZDO 1203.03(A) requires that, “[t]he use is listed as a conditional use in the zoning district in which the subject property is located.” 1000 Friends of Oregon (1000 Friends) appear to argue that the proposed use is not a permissible

conditional use in an EFU zone. 1000 Friends’ unfocused arguments make addressing the issues difficult, but I understand 1000 Friends to argue that not only does the application not meet the requirements for a home occupation to host events but that home occupations to host events are not even a permissible conditional use.¹ The first arguments are addressed under the home occupation to host events standards of ZDO 806. Table 401-1 lists the potential allowed uses in County EFU zones. Table 401-1 specifically lists “Home occupation to host events, subject to Section 806” as a conditional use. While 1000 Friends may argue that the proposed use does not satisfy the requirements for a home occupation to host events, that use is nonetheless listed as a potential conditional use in the EFU zone.²

ZDO 1203.03(A) is satisfied.

ZDO 1203.03(C) requires that “the proposed use comply with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.” Generally, ZDO 1007.07(B) provides that development “shall be granted only if capacity of transportation facilities is adequate or will be made adequate in a timely manner.” Certain developments, such as the proposed use however, are exempt from the facilities concurrency requirement. ZDO 1007.07(B)(5) exempts: “[h]ome occupations to host events, which are approved pursuant to Section 806[.]” Therefore, the applicant need not demonstrate compliance with concurrency requirements.

Under ZDO 1203.03(C), the application must also demonstrate that “the safety of the transportation system is adequate to serve the proposed use.” A number of opponents argue that the proposed use would make the transportation system in the area unsafe. According to opponents, the increased traffic would make it more difficult for emergency vehicles to operate, there would be conflicts with bicyclists, and there would be conflicts with farm vehicles. The proposal has now been reduced to up to 15 events per year with up to 100 guests per event. Access for the single family dwelling is from Wilken Lane, but the

¹ It would have been helpful if 1000 Friends had actually cited any of the ZDO provisions regarding home occupations rather than vague citations to state statutes and administrative rules.

² This is the third recent case involving applications to host events on EFU land that 1000 Friends have opposed. In the other two cases, Festive Hill Winery, Z0378-19-C, December 12, 2019 and Herkamp Barns, Z0540-19-C, April 20, 2020, 1000 Friends repeated many of the same arguments made in this case. In both of those decisions, I explained why I disagree with 1000 Friends on those issues. 1000 Friends continues to make many of the same arguments without any acknowledgement of the earlier cases, let alone any explanation of why the earlier decisions were wrong. This decision repeats much of the language from the earlier cases.

proposed access for the home occupation is on Homesteader Road. The applicant submitted a traffic impacts analysis from its transportation expert regarding impacts to the transportation system. The applicant originally proposed to host up to 50 events per year with up to 300 guests per event, so the impacts would be significantly less than that originally contemplated by opponents. The applicant's traffic expert explains that even using a worst case scenario the proposed use would only generate 100 trips (50 trips arriving – 50 trips leaving) from guests and 20 trips from employees and deliveries (10 trips arriving – 10 trips leaving). Most events would take place on weekends and therefore outside of peak hours. Arrivals would generally occur at a slightly extended time period while departures would be more closely spaced – about a ten minute period. The applicant's traffic expert persuasively explains that due to the location of the property and the ways to arrive at the property from various area in the greater Portland area that fifty percent of the trips would be to the east on Homesteader Road and fifty percent of the trips to the west. Homesteader Road is a rural collector with average annual daily traffic (AADT) of 440 vehicles to the east and 945 vehicles to the west. The applicant's traffic expert explains that there is more than adequate capacity on Homesteader Road to handle such traffic. There is more than adequate sight distance to enter and exit the property, and the access road is over 1000 feet long so there is plenty of space for vehicles to queue up without spilling onto Homesteader Road.

The applicant's traffic expert explains that the paved roadway is 22 feet wide, so there is plenty of room for vehicles to pull over to the side of the road to allow emergency vehicles to pass even if an emergency happened during the busiest time possible. The applicant's traffic expert explains that there is more than adequate sight distance on Homesteader Road as well as sufficient width for farm vehicles to use the road while guests would be arriving or departing. While there might be slight delays with farm vehicles, such delays would be few and far between and would not cause dangerous conditions. The applicant's traffic expert also explains that although bicyclists do use Homesteader Road, as with farm equipment, while there might be slight delays during events such delays would be very infrequent and would not cause dangerous conditions. The applicant's traffic expert's findings and conclusions are not disputed other than with speculation. The applicant's traffic expert's analysis is very thorough and persuasive. I agree with the

applicant's traffic expert that the safety of the transportation system is adequate to serve the proposed use.

Therefore, ZDO 1203.03(C) is satisfied.

ZDO 1203.03(D) requires that "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."

There are a number of steps in the analysis under ZDO 1203.03(D). The first step is to determine what the "character of the surrounding area" is. There does not seem to any dispute that the character of the area is farm use with scattered rural residential use.

The next step involves determining what primary uses of the surrounding properties may be affected. As many of the surrounding properties are zoned EFU, the primary uses on the surrounding properties are farm and forest (in this case farm) uses. Although residential use is not a primary use in the EFU zone and would not generally be a consideration under ZDO 1203.03(D), under ZDO 806.02(E) effects on residential use must be considered in EFU zones when the proposed conditional use is a home occupation to host events. Furthermore, there are a number of RRFF-5 zoned properties with residences in the surrounding area. Thus, the pertinent uses to consider are impacts to farm use and residential use.

The remaining question is whether the proposed use would alter the character of the surrounding area in a way that would substantially limit, impair, or preclude farm or residential uses on surrounding properties. In *York v. Clackamas County*, ___ Or LUBA ___, LUBA No. 2018-145, April 10, 2019 (*York*), the Land Use Board of Appeals (LUBA) explained that I must determine whether the proposed use would alter the character of the area in manner that substantially impairs or substantially limits the uses at issue.³ Opponents raise three impacts they believe would substantially limit or impair their farm and/or residential uses: noise, impacts on farm use, and traffic.

Opponents argue that noise from the proposed events would ruin their peaceful enjoyment of residential use. ZDO 806.02(J) provides:

³ LUBA agreed with my conclusion that the "substantially preclude" prong was unnecessary to reach as it set an even higher bar than the "substantially impair" and "substantially limit" prongs.

“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 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 average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 50 dB(A) or the ambient noise level.
 - “a. Noise generated by vehicles entering or exiting the subject property, 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.”

While I can certainly understand opponents’ concerns about noise, the applicant conducted a noise test that demonstrates that noise from the proposed events can meet the requirements of ZDO 806.02(J). The applicant submitted a thorough noise study from an acoustical expert that examined the noise levels that would be generated by the proposed use. The noise study took into consideration distance, atmosphere, wind, temperature, terrain, and vegetation in analyzing potential noise. The noise study measured the sound level at all the property lines based on a band playing outside at the house and determined that noise would be below the requirements of ZDO 806.02(J). The acoustical expert also recommended a condition of approval that the applicant would set the maximum volume of the band or loudspeakers when measured 50 feet in front of the band or loudspeaker based on measurements taken by the acoustical expert at the first event while still meeting the ZDO 806.02(J) requirements at the property lines. The applicant’s acoustical expert’s conclusions are not disputed other than anecdotal evidence that neighbors can hear lots of noise. The applicant’s acoustical expert’s testimony is more persuasive than opponents’ anecdotal evidence. As long as the applicant complies with the noise requirements of ZDO 806.02(J), I do not see that the proposed use would substantially impair or substantially limit farm or residential uses on surrounding lands.⁴ Especially with the condition of approval that the applicant monitor noise based on the acoustical expert’s measurements

⁴ The applicant’s acoustical expert also persuasively explains how noise from cars or guests talking would not violate ZDO 806.02(J).

from the first event, it is more than feasible that the applicant can satisfy the noise requirements of ZDO 806.02(J).

Opponents argue that the proposed use would substantially impair or substantially limit farm uses on surrounding lands because there would be conflicts between the proposed events and farm uses. Opponents' arguments are not particularly well developed, but they appear to argue that neighboring farm uses might have to curtail activities due to the proposed use and that traffic from the proposed use would interfere with farm vehicles.

While there might be conflicts between the proposed events and existing farm activities (although there is no real evidence that there would be), the surrounding owners would be under no obligation to modify their activities on behalf of the applicant. As the staff report explains:

“Prior to operating the home occupation, the applicant shall record a written irrevocable statement in the deed records of the County binding upon the landowner, and the landowner's successors in interest, acknowledging the right of adjacent and nearby farm and forest operators to employ accepted farm and forest management practices and prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes (ORS) 30.936 or 30.937. Impacts from farming and forest practices may include, but are not limited to: noise, dust, spray, smoke, vibrations, and visual impacts.”
Staff Report 27.

With the condition of approval, I do not see that there would be any impact on surrounding owners' ability to continue existing farm practices. Any impact on the proposed use would be the applicant's responsibility to mitigate for his guests - not for surrounding farm users to modify their behavior. For the applicant, this is just a consequence of conducting a home occupation to host events in an EFU zone.

Opponents argue that traffic from the proposed events would substantially impair and substantially limit both farm uses and residential uses. Initially, opponents argue that the increased traffic from the proposed events would interfere with farm vehicle traffic. I do not see that the traffic from proposed events would substantially impair or substantially limit farm use because of increased traffic. The applicant proposes to limit the number of events to a maximum of 15 events per year with only up to 100 guests per event. Even if all of those 15 events took place when farm vehicles were using Homesteader Road (which

would almost certainly not be the case) and had all guests arriving or leaving at the same time, that would only result in a minor inconvenience of increased traffic for a short period of time less than a couple of times per month.⁵ Thus, even under a worst case scenario, farm vehicles (which do not generally travel particularly quickly to begin with) would experience only a minor delay very infrequently. I do not see that this rises to the level of substantially impairing or substantially limiting farm uses.

Opponents also argue that the increased traffic from the proposed events would substantially impair or limit residential uses because residents would be stuck in traffic. As discussed earlier, I do not see that there would be any safety concerns regarding traffic generated by the proposed use. As discussed regarding the impact on farm vehicles, the same analysis applies to residential traffic - while there would be a small impact on traffic during some events, I do not see that minor delays at such an infrequent level rise to the level of substantially impairing or substantially limiting residential use.⁶

ZDO 1203.03(D) is satisfied.

All of the conditional use approval criteria of ZDO 1203.03 are satisfied.

2. Home Occupation to Host Events Approval Criteria

ZDO 806.02 provides the standards for home occupations to host events. 1000 Friends do not cite any of the provisions of ZDO 806.02, which are the applicable provisions. Instead, 1000 Friends' make numerous arguments involving state statutes. I will do my best to address 1000 Friends' arguments.

1000 Friends argue that the applicant fails to demonstrate that he will operate the home occupation. This argument is also very difficult to follow. 1000 Friends cite ORS 215.448(1)(a), but that statute merely provides that the home occupation "shall be operated by a resident or employee of a resident of the property on which the business is located." ZDO 806.02(A) provides that the "operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located." There is no dispute

⁵ Even if all of the events were squeezed into the summer months, it would still result in around one event per week – which is still not much of an inconvenience.

⁶ A number of opponents testified that although they could accept a smaller number of events that 50 events per year with up to 300 guests per event would be too great of an impact. Given that the applicant has volunteered to reduce the proposal, some of those opponents may now be satisfied.

that the applicant lives full time in the dwelling on the property. ZDO 806.01(C) defines “Operator” as:

“The person who conducts the home occupation, has majority ownership interest in the home occupation, and is responsible for strategic decisions and day-to-day operations of the home occupation.”

1000 Friends neither acknowledge nor address the ZDO, and I fail to see how it is possible that the applicant would not be the person who has a majority interest in the home occupation and would be responsible for strategic decisions and day to day operations. If the applicant merely leased the property to others who then hired their own employees to conduct the events then the home occupation might not be “operated by a resident or employee of a resident of the property.” In other words, if the applicant had no involvement in the home occupation other than letting other people rent out the property then 1000 Friends’ argument might have merit. As I understand the application, the applicant would be the person contracting with prospective clients and working with those clients to provide the required services – such as photographers, bands, DJs, etc. The applicant would, in other words, be the *operator*. The mere fact that the applicant would make the space available for others to rent would hardly change this fact – despite 1000 Friends’ vague protestations to the contrary.

ZDO 806.02(A) is satisfied.

1000 Friends argue that the proposed use would have more than five employees.⁷ ZDO 806.02(B) provides that the “home occupation shall have no more than five employees.” According to 1000 Friends, the applicant cannot conduct the proposed events without more than five employees. The applicant submitted a detailed operational plan which explains how a typical wedding with 100 guests can be conducted with five or fewer employees. Opponents have not responded to the operational plan, let alone refuted the plan. I have reviewed the operational plan, and I agree with the applicant that it is possible to operate the proposed use with no more than five employees. In any event, the proposed conditions of approval require the applicant to comply with the five employee requirement, and based on the applicant’s representations it is feasible that can be accomplished.

⁷ 1000 Friends cite ORS 215.448(1)(b), which provides a home occupation “shall employ on the site no more than five full-time or part-time persons[.]”

ZDO 806.02(B) is satisfied.

1000 Friends argues that the applicant does not intend to conduct the home occupation in the dwelling or other buildings normally associated with uses permitted in the EFU zone.⁸ ZDO 806.02(C) provides that in EFU zones:

“* * * the home occupation shall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the [EFU] zoning district.”

The applicant intends to conduct the home occupation to host events in the large garage. I do not think there is any doubt that the garage is either the operator’s dwelling or a building normally associated with permitted uses in the EFU zone. 1000 Friends argue that the applicant has not demonstrated that the garage can accommodate 300 people. Initially, the proposal has been reduced to a limit of 100 guests. Furthermore, if the applicant cannot accommodate 100 guests in permissible areas then the number of guests would have to be reduced. I do not see that the applicant must document every improvement he intends to make to the garage as 1000 Friends suggests. The applicant may use the garage to host events.

The applicant also intends to use the “garden courtyard area north of the main dwelling” as well as temporary tents. 1000 Friends argues that conducting the home occupation in such outdoor area and tents does not constitute operating the home occupation “substantially in the operator’s dwelling or other buildings normally associated with uses permitted” in EFU zones. The applicant does not specifically respond to 1000 Friends’ argument that the garden and other outdoor areas of the property do not comply with ZDO 806.02(C) other than to argue that such areas can be used as long as the home occupation is “substantially” operated in permissible buildings. I address the “substantially operate” requirement later. The applicant argues that the home occupation will be substantially conducted in the existing garage and the temporary tents.⁹ The applicant asserts that the temporary tents are “buildings normally associated with uses permitted in the [EFU] zoning district.” The applicant argues:

⁸ 1000 Friends cite ORS 215.448(1)(c)(B), which provides that the home occupation “shall be operated substantially” in the dwelling or “[o]ther buildings normally associated with uses permitted in the zone in which the property is located[.]”

⁹ It may be that the applicant intends most of those outdoor areas to be enclosed in the temporary tents.

“Use of temporary tents is permitted throughout the County, and specifically allowed under ZDO 806.02(D) as follows: ‘[i]n the AG/F, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C).’ In other words, tents are permitted on the Property to the extent that they are ‘normally associated’ with uses permitted in the EFU district. As the Clackamas County EFU district specifically contemplates and allows a ‘home occupation to host events’ as a conditional use, the Hearings Officer can find that tents can be used to house the proposed events, including weddings. 1000 Friends’ argument that the garage and tents are ‘commercial structures’ is without merit because it offers no textual or factual support for that argument.” Applicant’s Final Legal Argument, June 25, 2020 p 7-8.

I tend to agree with the applicant’s argument except for the point that the temporary tents for hosting events as part of a home occupation are “other buildings normally associated with uses permitted in the [EFU] zoning district.”¹⁰ ORS 215.448(1)(c) does not mention temporary tents, the statute just requires that the home occupation be operated substantially in the dwelling or buildings normally associated with EFU uses. ZDO 806.02(D) allows temporary tents on EFU land, but only to the extent consistent with ZDO 806.02(C) which incorporates the “other buildings normally associated” with EFU uses language of ORS 215.448(1)(c). If temporary tents were “buildings normally associated with uses permitted in the [EFU] zoning district” then there would be no need for ZDO 806.02(D), as temporary tents would already be authorized. I think ZDO 806.02(D) demonstrates that temporary tents are not prohibited on EFU land outright, but cannot be included in the areas that the events are substantially operated in. I think ZDO 806.02(D) means that temporary tents may be used on EFU land for home occupations to host events as long as the events are operated substantially in the dwelling or other farm use buildings other than the temporary tents. In other words, I do not agree that temporary tents are “other buildings normally associated with” EFU uses.¹¹ Therefore, in order to comply with ZDO

¹⁰ Although no one raises this issue, I am not sure that temporary tents are even buildings, regardless of whether they are normally associated with uses permitted in the EFU district. While the fact that temporary tents are not fully enclosed may not be a problem, the fact that they are only erected for one day at a time may be.

¹¹ While I think this is what the statute and ordinance mean, I do think it is odd that if the applicant had a pole barn on the property- which is not too far removed from a permanent tent- that that would almost certainly be a building normally associated with EFU uses. The applicant could then use the pole barn for essentially the same purpose he seeks to use the temporary tents. While opponents might argue that a pole barn would reduce impacts on neighboring properties compared to outdoor activities or a temporary tent, I do not think the purpose of ORS 215.448(1)(c) is to protect neighboring properties from the impacts of home occupations, such as noise, light, etc. Rather, I think the purpose of the statute is to prevent buildings not normally

806.02(C) the home occupation must be substantially operated in the dwelling, the garage, or other buildings on the property. While temporary tents may be used, they may only be used to the extent that the home occupation is operated substantially in the dwelling, garage, or other buildings on the property.

Finally, while the issue is somewhat tied up with the issue of temporary tents, the applicant argues that certain components of the events may take place outdoors, such as the wedding ceremony itself and wedding photographs. The applicant explains that the wedding ceremony and pictures generally take about an hour and a half out of an entire event that lasts for over six hours. According to the applicant, the event could still be substantially operated in the dwelling or permissible buildings as long as the outdoor areas were only used for these limited purposes. I agree with the applicant. While the parties do not discuss what they think “substantially” means, I think it means that the home occupation must be mainly operated in the dwelling or other buildings rather than outside or in temporary tents. I am not sure there is a specific percentage or magic number, but I think that if all but an hour and a half out a more than six hour event is conducted in the dwelling or permissible buildings that that constitutes being substantially operated in those areas.

In conclusion, while the applicant may use outdoor areas and temporary tents, the events must be substantially operated in the dwelling, garage, or other buildings on the property. With such a condition of approval, ZDO 806.02(C) is satisfied.

All of the home occupation to host events approval criteria are satisfied.

3. Statutory Arguments

1000 Friends make various arguments based on state statutory provisions without any explanation as to how or why they are applicable to the application. I will do my best to address those arguments.

1000 Friends argue that the proposed use is an impermissible “commercial use” in an EFU zone. 1000 Friends’ argument is very difficult to follow. While 1000 Friends is correct that ORS 215.283 generally restricts uses in EFU zones to farm and forest uses, there are certainly a number of exceptions. One of those exceptions is home occupations, which are

associated with uses permitted in the zone from being built. Ironically, the statute could have the effect of encouraging the building of putative farm use buildings that would actually be used for hosting events.

specifically discussed in ORS 215.448 – which 1000 Friends cites repeatedly. ZDO 806.02 clearly allows for home occupations to host events on EFU land. Whether or not there is a “commercial” aspect to such uses is irrelevant. They are allowed uses. 1000 Friends’ argument is without merit.

1000 Friends argue that the proposed use violates OAR 660-033-0130(2)(a), which provides:

“No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, * * *.”

According to 1000 Friends, because the proposed building has a capacity of more than 100 people and it is within three miles of the UGB, it cannot be approved. 1000 Friends misread the rule. OAR 660-033-0130(2) only applies when the table from OAR 660-033-0120 triggers the application of the rule. Under the OAR 660-033-0120 table, OAR 660-033-0130(2) obviously does not apply to a home occupation to host events.¹² 1000 Friends made the same argument in Festive Hill Winery and Herkamp Barns without any explanation of why an administrative rule that clearly does not apply has any bearing on the application. In this case, 1000 Friends states that the County “cannot create an exception to these limits for commercial event centers, like wedding venues. The text and context and history of these rules demonstrates that allowing such exceptions would undermine the purpose of these rules.” While that at least attempts to explain why 1000 Friends cites an inapplicable rule, 1000 Friends does not explain *why* the text, context, and history of “these rules” – presumably OAR 660-033-0130(2) – would prohibit home occupations on EFU land. As best I can tell, 1000 Friends’ argument is some kind of inverse Religious Land Use and Institutionalized Persons Act (RLUIPA) claim. To the extent that is 1000 Friends’ argument, it is not sufficiently developed for review and if anything might theoretically lead to a RLUIPA claim for a religious institution rather than provide a basis to deny this application.

¹² OAR 660-033-0130(2) generally is applied to park, quasi-public, and public uses such as parks, churches, community centers, and golf courses.

1000 Friends argues that the proposed use does not comply with ORS 215.296(1), which provides:

“A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

- “(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- “(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

Although ORS 215.296(1) is not listed in the ZDO as an applicable approval criterion, it is incorporated into ZDO 401.05(A)(1) which is an approval criterion. The staff report concludes that the application satisfies ZDO 401.05(A). 1000 Friends argue that the “applicant’s analysis falls short of evaluating the impacts of the commercial event center for weddings on nearby farm uses. In addition to failing to describe the practices that occur in the surrounding area, the applicant fails to determine the traffic impacts from the event center on those uses.” While 1000 Friends might have had a point about the applicant’s original application, during the open record period the applicant submitted a very thorough farm practices impact analysis. The farm practices impact analysis includes a farm by farm evaluation of all properties within a quarter-mile radius of the subject property. The farm practices impact analysis exhaustively explains why the proposed use would not force a significant change in or increase the cost of farm practices on surrounding lands. 1000 Friends do not acknowledge, let alone challenge, the applicant’s farm practices impact analysis.

Opponents’ arguments are based on the allegations that traffic will make it more difficult for farm vehicles to use the roads. As discussed earlier, I do not see that the minor inconvenience of slight potential delays of at the most 15 days a year would have any significant impact on farm uses in the surrounding area. The farm practices impact analysis further explains why event traffic would not significantly affect farm use. The farm practices impact analysis, which is not challenged, is much more persuasive than 1000 Friends’ hypothetical concerns.

ZDO 401.05(A) is satisfied.

All of the 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 Z0044-20-C 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) dated 1/31/20. The application was deemed complete on 2/03/20. No work shall occur under this permit other than that 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, at (503) 742-4657 or at wendicor@co.clackamas.or.us
- 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 may be contacted at 503-742-4657, or 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) The conditional use approval is valid for four years from the date of the final written 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.
- 6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

II. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.co

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Any outdoor lighting [ZDO 1005.05(A) and (B)] and 806.02(I) shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
- 3) All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010. 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.
- 4) Use of on-site sewage disposal facilities, if proposed, shall be subject to approval by Septic & Onsite Wastewater System Programs.
 - 5) **Prior to commencement of use:** the applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.co.clackamas.or.us under “Garbage & Recycling.”
 - 6) **Prior to use:** The applicant shall obtain any necessary County Health Department Licenses and comply with County Health Department regulations.
 - 7) **Prior to use:** The applicant shall obtain any applicable OLCC Licenses and comply with OLCC regulations.
 - 8) The operator of the home occupation shall be a resident of the property on which the home occupation is located.
 - 11) The home occupation shall have no more than five full-time or part-time employees on the site.
 - 12) 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.
 - 14) 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. Total maximum of 15-events per year.
 - 15) A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time.
 - 16) The events shall be operated substantially in the dwelling, garage, or other buildings on the property. Temporary tents and outdoor areas may be used, but use of those areas does not constitute operating in the dwelling or other buildings normally associated with uses permitted in the EFU zone.
 - 17) The maximum number of guests for any single event shall not exceed 100.
 - 18) Noise shall be regulated as follows:

- A. 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 of the noise shall not exceed the greater of 60 dB(A) or the ambient noise level when measured off the subject property. During all other hours, the average peak sound pressure level of the noise shall not exceed the greater of 50 dB(A) or the ambient noise level when measured off the subject property.
 - i. Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.03(N)(1).
 - ii. Subsection 806.03(N)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.
- B. During the first hosting event, a professional acoustical consultant with an approved sound level meter will measure the music sound level at the property lines to verify compliance. At the same time, the applicant will record the sound pressure level with his sound level meter at 50 feet in front of the band area and record the decibel level. During following events, the applicant will use his sound level meter to restrict the sound level 50 feet in front of the band to the same level as when the professional acoustical consultant determined compliance at the property lines.

19) Restroom facilities shall be regulated as follows:

- A. Portable restroom facilities shall include hand-sanitizing or hand-washing facilities.
- B. Portable restroom facilities shall be subject to the standards of the service provider and the County Septic & Onsite Wastewater System Programs.
- C. Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings (existing can satisfy) and shall be located a minimum of 50 feet from all lot lines.

20) Prior to operating the home occupation, the applicant shall record a written irrevocable statement in the deed records of the County binding upon the landowner, and the landowner's successors in interest, acknowledging the right of adjacent and nearby farm and forest operators to employ accepted farm and forest management practices and prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes (ORS) 30.936 or 30.937. Impacts from farming and forest practices may include, but are not limited to: noise, dust, spray, smoke, vibrations, and visual impacts.

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

- 1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.
- 2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:
 - a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
 - b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
 - c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
 - d. All necessary permits and approved plans must be issued and maintained onsite as required.
 - e. All required inspections, corrections, and final approval must be obtained.

IV. Engineering Division Conditions: Ken Kent, (503) 742-4673,
kenken@clackamas.or.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) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
- 3) Minimum intersection sight distance of 500 feet shall be provided and maintained at the proposed driveway serving the event site. Intersection sight distance can be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height of 3.5 feet in the center of the oncoming travel lane.
- 4) The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use site, as follows:

- a) Parking spaces shall meet minimum *ZDO* Section 1015 and Roadway Standards Drawing P100 requirements.
 - b) All roads used to access the event facility site shall be surfaced with screened gravel or better and no less than 20 feet in width.
 - c) One driveway approach on SW Homesteader Road is approved for the event site use. The approach adjacent to the east property line shall be closed.
 - d) Roads and parking areas shall be constructed per Standard Drawing R100. The minimum road width serving the event site shall be 20 feet.
 - e) Parking spaces shall be adequately delineated. For paved surfaces, parking spaces shall be striped. For a gravel surface, tire stops or a similar physical feature shall be provided to delineate each gravel parking space.
 - f) The applicant shall provide a dimensioned site plan indicating each parking space and drive aisles.
 - g) Handicapped (ADA) parking spaces and adjacent accessible areas shall be paved with asphalt concrete or an equivalent approved by Clackamas County Engineering staff, as required by the Building Department.
 - h) Drainage facilities shall be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4, providing water quality treatment and conveyance to a suitable outfall.
- 5) 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 the Tualatin Valley Fire & Rescue for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b) Written approval from the Clackamas County Engineering for surface water management facilities and erosion control measures.
 - c) A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
 - i) The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
 - ii) The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the

public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.

- iii) The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.

V. Septic & Onsite Wastewater Systems Programs Conditions: Aaron Dennis, (503) 742-4614, adennis@clackamas.us

- 1) Applicant states they intend to use an existing restroom inside the garage/workshop. They will need an authorization notice for this proposed change of use. Given flows associated with large events it may make more sense to block off/lock garage bathroom and utilize temporary toilets for the events.

DATED this 16th day of July, 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).