

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

Regarding an Application for a Conditional Use)	Case File No.
Permit to Establish a Recreational Vehicle)	Z0368-19-C
Camping Facility.)	(Goldsworth)

A. SUMMARY

1. The owners are William Goldsworth and T.M. McMullin. The applicants are William Goldsworth and Tricia Goldsworth.
2. The subject property is located at 21818 South Bakers Ferry Road, Oregon City, OR 97045. The legal description is T2S, R3E, Section 22, Tax Lot 2900 W.M. The subject property is approximately 6.87 acres and is zoned RRFF-5 – Rural Residential Farm Forest – 5 Acre Minimum.
3. On October 3, 2019, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. The record was left open one week for the submission of new evidence, testimony, and argument; one additional week 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 October 13, 2019. 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 and recommended denial of the application.
3. William Goldsworth and Tricia Goldsworth 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 left the record open one week for new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

C. FACTS

The subject property is an approximately 6.87-acre parcel zoned RRFF-5. The property is located at 21818 South Bakers Ferry Road, Oregon City, OR 97045, on the south side of South Bakers Ferry Road between South Eaden Road and South Harding Road near Barton Park. The property has a residence and associated outbuildings. The subject property is bordered to the north, east, and south by land zoned AG/F – Agriculture Forest. There are other RRFF-5 properties to the southwest and northwest. The applicants seek to develop the property with a Recreational Vehicle Camping Facility. The application was filed in response to code violations, as the applicants have been operating a Recreational Vehicle Camping Facility for some time. The applicants seek approval for up to 18 recreational vehicle (RV) parking sites.

D. DISCUSSION

Clackamas County Zoning and Development Ordinance (ZDO) 1203.03 provides the approval criteria for conditional uses. The staff report explains that many of the approval criteria are satisfied but some are not satisfied. Most 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 therefore adopt and incorporate the findings in the staff report in this decision, except as discussed further.

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." Opponents argue that there are traffic safety concerns with the proposed use. According to opponents, there are blind corners and increased traffic in the area and adding RVs to the situation

would only make things worse. Comments from the department of Transportation and Development (DTD) and the staff report explain that the minimum amount of sight distance necessary for the entrance to the subject property is 610 feet to the northeast and 530 feet to the southwest. The proposed conditions of approval require the applicant to conform to the applicable County standards. The comments from DTD and the staff report are more persuasive than anecdotal comments from opponents. As the staff report explain, with the proposed conditions of approval, the safety of the transportation system is adequate to serve the proposed use.

ZDO 1203.03(C) is satisfied

ZDO 1203.03(D) requires 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.” The only primary use raised by opponents that is allegedly substantially limited, impaired, or precluded is rural residential use. Thus, the question is whether the proposed use “will alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding [RRFF-5] properties” for residential use.

In order to answer this question, I must determine what the character of the surrounding area is. While there was not much discussion about the character of the surrounding area, it appears to be a mixed area of rural residential use with larger farm or forest operations. The opponents argue that the proposed use will interfere with their rural residential use. Opponents argue that traffic, lights, views of the RV facility, and danger from RV campers will affect their rural residential use. While there has been some problem with burning of slash piles on the subject property, the applicant will be working with the local fire department in the future. Additionally, I am not sure that burning slash piles is necessarily related to the RV camping facility use. In any event, I agree with the applicants that such burning will not be a problem in the future.

Opponents argue that views of the RV camping facility are unsightly. While this may be true, opponents do not have the right to completely unsullied views. I do not see that merely looking at an RV camping facility would substantially limit, impair, or preclude rural residential use. Furthermore, the applicants would have to comply with the applicable

landscaping screening requirements, which would further reduce opponents' views of the RV use.

Opponents argue that lighting on the property will interfere with night sky viewing on adjacent properties. Opponents do not have the right to prevent the applicants from having any lighting on their property. Furthermore, the applicants explain that lighting would be minimized with low level lights and motion detector security lighting in limited areas. I do not see that some lighting on the subject property would substantially limit, impair, or preclude rural residential uses on surrounding properties.

Opponents argue that traffic would interfere with their rural residential use. As explained, however, the application complies with the traffic requirements of ZDO 1007.07. The proposed use would not generate substantial amounts of traffic, and the area already has steady traffic – so I do not see that any additional traffic from the proposed use would substantially limit, impair, or preclude residential use of surrounding properties.

Opponents argue that the noise and potential danger from campers would interfere with their rural residential use. Generally, assessing whether a proposed use would interfere with surrounding uses is a speculative analysis. In the present case, however, the RV camping use has been occurring on the property for some time. Opponents testified at the public hearing that there had not been any problems with campers in the past. While this is not a guarantee of a lack of future problems, it is a good indication that the RV campers will not be so noisy or such a security risk that they would substantially limit, impair, or preclude surrounding rural residential use. To further ensure continued compliance, a condition of approval requiring a six foot sight obscuring fence along the border with RRF-5 zoned properties is warranted.

Finally, opponents argue that the proposed RV facility would negatively affect their property values. While the parties dispute the effect on property values, it is irrelevant because property values are not an approval criterion or even a consideration under ZDO 1203.03(D). *Morton v. Clackamas County*, 70 Or LUBA 7, 13-14 (2014); *Tylka v. Clackamas County*, 34 Or LUBA 14, 29 (1998).

ZDO 1203.03(D) is satisfied.

ZDO 1203.03(F) requires that the “proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject

property is located, Section 800, Special Use Requirements, and Section 1000, Development Standards.” ZDO 1002 pertains to the protection of natural features. Opponents argue that the proposal violates ZDO 1002, but opponents do not explain how ZDO 1002 is violated. Opponents do not cite to any provision under ZDO 1002, but they do mention removal of trees on hillsides. ZDO 1002.01 applies to steep slopes, but the proposed use is not on steep slopes. ZDO 1002.02 applies to excessive tree removal – which appears to be what opponents are referencing – but ZDO 1002.02 only applies to properties within the Metro UGB. As far as I can tell (and opponents do not argue), the property is not within the Metro UGB. Therefore, ZDO 1002.02 does not apply. Opponents make no arguments under any other provisions of ZDO 1002.

Therefore, ZDO 1002 is satisfied.

ZDO 1006 pertains to water supply, sanitary sewer, surface water, and utilities. Opponents argue that the proposed use might interfere with nearby wells. ZDO 1006.03(F)(1) requires that the applicants “shall specify a lawful water source for the proposed development such as * * *[an] exempt-use well.” The applicants have an exempt-use well to use for their water supply. While ZDO 1003.03(F)(2) involves effects on existing wells, that provision only applies in sensitive groundwater areas. The subject property is not in a sensitive aground water area, so ZDO 1003.03(F)(2) does not apply.

Opponents argue that the septic system might affect nearby properties or reach the Clackamas River. ZDO 1006.05(A) requires that the proposed development receive approval for subsurface sewage disposal from the County. The County approved the applicants’ septic system plan.

Therefore, ZDO 1006.05(A) is satisfied.

ZDO 1009 pertains to landscaping. The staff report noted that there was insufficient information to satisfy the landscaping screening and buffering requirements. The applicant submitted a revised site plan demonstrating the required screening and buffering. With the new site plan, ZDO 1009 is satisfied.

ZDO 1015 pertains to parking. Table 1015-1 provides that Recreational Vehicle Parking Facilities must provide one parking space per campsite (in addition to the RV parking) and one space per employee at peak employment level. The revised site plan shows that each of the 18 RV parking spaces also include a parking space, and additional

parking spaces are provided for employees.

Therefore, ZDO 1015 is satisfied.

Therefore, ZDO 1203.03(F) 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 Z0368-19-C, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I. General Conditions:

- 1) Approval is for the specific use identified in the application. This land use permit is based on the submitted written narrative and plan(s) dated August 12, 2019, and deemed complete August 19, 2019. 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) **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. The statement of use is used to calculate the Transportation System Development charge.
- 3) If approved, the conditional use is valid for four 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.
- 4) 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.
- 5) 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.us

- 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) The facility shall be operated as described in the submitted application materials.
- 3) The applicant will construct a six-foot high sight obscuring fence along the border of the property where it is adjacent to RRFF-5 zoned properties.

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

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes.
- 2) All necessary development permits (septic, building, electrical, grading, driveway, etc.) for this facility and associated buildings shall be submitted and receive final approval and inspections before use begins within four years of the final decision.
- 3) RV Park Permit to be obtained as required through OAR 918

IV. Engineering Division Conditions: Jonny Gish, (503) 742-4707

1. Prior to site improvements:

- a. A Park Permit is required prior to Development Permit issuance for the onsite roads and circulation. All work under the Park Permit shall be constructed and inspected per ORS918-650.
- b. A Development Permit is required from the Engineering Department for review and approval of frontage improvements, erosion control Best Management Practices implemented and intersection sight distances. The permit shall be obtained prior to commencement of site work and Certificate of Occupancy. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.

- 2. Prior to Site Improvements:** Submit approvable construction Plans showing all required improvements. All proposed and required improvements shall be

designed, constructed, inspected and approved, or financially guaranteed, pursuant to *Clackamas County Roadway Standards* and Oregon revised Statute 918-650.

- a. Close, remove and restore the existing residential entrance to S Baker Ferry Rd.
 - b. Provide a paved shared private driveway approach directly across from S Latourette Rd intersecting S Baker Ferry Rd and constructed per Standard Drawing 500. With a minimum length of 20 feet measured from the existing edge of pavement and width a minimum travel width of 20 feet. The approach shall also include construction of a minimum 20-foot long platform/landing with a grade not to exceed plus or minus five percent. Minimum tangent length shall be 20 feet.
 - c. Security gates and setbacks shall meet Oregon Fire Code requirements.
 - d. Provide a minimum 10-foot wide shared private road,
 - e. Maintain positive drain flow throughout disturbed area using erosion control Best Management Practices.
3. The applicant shall obtain a Utility Placement Permit with the Clackamas County DTD for all utility work within the Right-of-way of S Baker Ferry Rd.
 4. Provide a certificate of liability insurance, naming Clackamas County as additionally insured for work within the right-of-way, referencing Z0368-19.
 5. **Prior to Final Inspection:** the applicant shall provide and maintain minimum intersection sight distances at the proposed shared private road intersection with S Baker Ferry Rd. Intersection sight distance shall restrict plantings at maturity, retaining wall, embankments, trees, fences or any other objects that obstruct vehicular sight distance. Minimum required intersection sight distance is 610 feet to the northeast and 530 to the southwest.

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

1. The applicant will comply with all of the requirements of the Department of Transportation, Soils Division as detailed in Exhibit 5.

DATED this 12th day of November, 2019.



Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

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 mailing (which date appears on the last page herein).