

STAFF REPORT



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Application for a Conditions of Approval Review

Case File: T2-2021-14981, COA-2025-0004 **Applicant:** Scott Reed

Proposal: Request for a Conditions of Approval review for land use case no. T2-2021-14981.

Location: 12424 NW Springville Road, Portland **Property ID #** R324300, R324339, R501639

Map, Tax lot: 1N1W16D -02800, 1N1W16D - 03100, 1N1W15C -00600 **Alt. Acct. #** R961160130, R961160590, R961150770

Base Zone: Exclusive Farm Use (EFU)

Overlays: Significant Environmental Concern – Wildlife Habitat (SEC-h), Significant Environmental Concern – Streams (SEC-s), Geologic Hazard (GH)

Scheduled before one of the County’s Hearing’s Officers on **Friday, June 13, 2025** or soon thereafter via virtual hearing.

Applicable Approval Criteria:

Multnomah County Code (MCC): General Provisions: MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions

Exclusive Farm Use (EFU): MCC 39.4225(C) Review Uses Dwelling Customarily Provided in Conjunction with a Farm Use, MCC 39.4240 Single Family Dwelling Condition of Approval, MCC 39.4245(C), (D), (F), (H) Dimensional Requirements and Development Standards, Former MCC 39.4265(B)(3) (2021), repealed by Ordinance 1304 (2022) Standards for Specified Farm Dwellings Not high-value farmland soils, capable of producing the median level of annual gross sales

Copies of the referenced Multnomah County Code sections are available by visiting <https://www.multco.us/landuse/zoning-codes> under the link **Chapter 39: Multnomah County Zoning Code** and at <https://multco.us/landuse/comprehensive-plan> under the link **Multnomah County Comprehensive Plan**.

Vicinity Map



Recommended Hearing Officer Decision

In the August 15, 2023 decision in Case No. T2-2021-14981, the Hearings Officer approved the applicant's application with conditions, and conditioned issuance of a building permit on the requirement that the applicant provide the farm income information described in Condition 1. Based on the finality of that land use decision, the only issue before the Hearings Officer in this proceeding is whether the applicant has complied with Condition 1 and the interpretation of the condition's requirements.

Staff defers to the Hearing Officer to determine if the applicant has satisfied Condition 1 for land use Case No. T2-2021-14981.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: The applicant submitted a request for the review of the Conditions of Approval associated with land use case no. T2-2021-14981. Pursuant to Condition 1, the Planning Director has provided an opportunity for a hearing before making a decision on whether the submittals satisfy this condition.

2.0 T2-2021-14981 Conditions of Approval

1. **Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner shall submit evidence to the Planning Director demonstrating that the subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in by OAR 660-033-00135(2) (B);**
 - a. **To satisfy section 1., Owner shall submit an IRS Schedule F for the year(s) associated with the sales figures noted in the narrative in order to demonstrate that the farm activity on the property met or exceeded the median level of annual gross farm sales required by OAR 660-033-00135(2)(B). The income required by this condition is set at the time of the filing of this application which was August 18, 2021.**

- b. The Planning Director shall provide notice and an opportunity for a hearing to all properties that received the notice for this application before making a decision on whether the submittals satisfy this condition.**

Staff:

A. Applicant's May 2, 2025 letter and attachments.

For the purpose of complying with Condition 1, the applicant submitted a May 2, 2025 letter and attachments. The attachments include a copy of a 2020 Schedule F that accompanies a March 24, 2025 letter from a certified public accountant. Exhibit AA.14. The accountant's letter states that the attached 2020 Schedule F was "prepared with the 2020 tax returns" for the applicant. *Id.* at 1. The accountant's letter also includes a statement clarifying that the accountant has "not audited, reviewed or otherwise verified the information provided by [the applicant]." *Id.*

The May 2, 2025 submission includes an IRS account transcript that the applicant requested and received on May 2, 2025. Exhibit AA.16. An IRS account transcript provides a record of "filing status, taxable income, and payment types," and an account transcript also "shows changes made after you filed your original return."¹ The account transcript shows that the applicant filed a 2020 tax return on February 18, 2025, which was processed by the IRS on March 31, 2025. Exhibit AA.16.

Based on the information provided by the applicant, it appears that the applicant intends to show that the March 24, 2025 accountant letter and accompanying Schedule F corresponds to an amended 2020 individual tax return that the applicant filed on February 18, 2025.

In addition, the applicant submitted a Form 4506, dated April 2, 2025, which requests a copy of the applicant's 2020 individual tax return from the IRS. Exhibit AA.15 at 1. The applicant included receipts for the purchase of postage along with a certified mail receipt. Exhibit AA.15 at 2. Entering the tracking number for the certified receipt on USPS's website shows delivery on April 7, 2025. In the applicant's May 2, 2025 submission, the applicant did not include any response from the IRS or a certified copy of the 2020 individual filing requested in the Form 4506.

Finally, the applicant submitted online listings for the sale of goats in 2023. Exhibit AA.17. The applicant also provided order confirmations for hundreds of chicks in 2021, 2022, 2023 and 2025. Exhibit AA.18. None of the information shows purchases or sales for 2020.

B. Staff seeks clarification from the Hearings Officer on the following issues.

Condition 1 requires the applicant to provide "an IRS Schedule F for the year(s) associated with the sales figures noted in the narrative in order to demonstrate that the farm activity on the property met or exceeded the [income level]" required by OAR 660-033-0135(2)(B). For the following reasons, it is unclear to Staff whether the applicant's May 2, 2025 submission satisfies the requirements of Condition 1. Staff seeks clarification from the Hearings Officer on three issues.

First, does Condition 1 require the applicant to provide an IRS Schedule F for gross farm sales from 2021 described in the applicant's narrative? Relatedly, does Condition 1 require the applicant to provide an IRS Schedule F for both 2020 and 2021.

Second, does the applicant's use of a 2020 Schedule F from an amended filing submitted to the IRS in February 2025 satisfy the Condition 1 requirement to submit an IRS Schedule F for the purpose of "demonstrating that the subject tract is currently employed" for farm use capable of producing the requisite gross sales as of August 18, 2021, the date the applicant filed the application.

¹ See "Tax account transcript" at <<https://www.irs.gov/individuals/transcript-types-for-individuals-and-ways-to-order-them>>

Third, given that the Hearings Officer discussed the need for a “finalized” Schedule F, does Condition 1 require the applicant to submit an IRS Schedule F that has been verified or certified as having been filed for the years required by Condition 1?

1. Does Condition 1 require the applicant to provide an IRS Schedule F for gross farm sales from 2021 described in the applicant’s narrative?

Condition 1 seeks “an IRS Schedule F for the *year(s)* associated with the sales figures noted in the narrative.” (emphasis added). The condition also explains that “[t]he income required by this condition is set at the time of the filing of this application which was August 18, 2021.” Staff interprets the text of Condition 1 to, at the very least, require the applicant to submit an IRS Schedule F for the 2021 sales figures described in the application narrative, Exhibit A.3. Those sales figures include \$16,625 for egg sales. The applicant has not provided an IRS Schedule F for 2021. Staff seeks clarification from the Hearing Officer on whether the applicant’s May 2, 2025 submission fully satisfies Condition 1 because the income figures shown on the Schedule F are not consistent with the 2021 sales figures described in the applicant’s application narrative. Staff also seeks clarification from the Hearings Officer on whether Condition 1a requires the applicant to provide an IRS Schedule F for both 2020 and 2021.

Rather than providing Schedule F’s from the applicant’s original 2020 and 2021 IRS filings, the applicant submitted information from what appears to be an amended 2020 filing—submitted in 2025—for a single tax year (2020). Exhibit AA.14, AA16. It is also not clear to Staff that the income from the amended 2020 filing corresponds “with the sales figures noted in the narrative” referenced by Condition 1. The \$44,551 of farm income shown on the Schedule F for the amended 2020 filing does not match the sales figures described in the applicant’s application narrative. *Compare* Exhibit A.3 at 12 and Exhibit AA.14 at 2. The \$44,511 in income does however match the income asserted in the applicant’s 2022 hearing statement. Exhibit H.3 at 17, 20, and 21.

In the application narrative dated August 16, 2021, the applicant provided the following sales figures for 2021:

“The subject tract currently has 133 Golden Bovan pasture raised layers which produce approximately 40,000 eggs per year. These eggs are collected, cleaned, inspected, packaged, refrigerated, and then delivered to customers every week. Residential customer pay \$6 per dozen and commercial customers pay \$5 per dozen (when purchasing at least 5 dozen). The farm also currently breeds Boer goats for sale. The eggs along produce over \$16,625 in annual gross sales which exceeds the annual gross sales (\$14,942.91) required in subsection (b) of this section.”

Exhibit A.3 at 12. During the hearing on August 12, 2022, the applicant provided a different set of sales figures for 2020. In a hearing letter, the applicant states the following:

“In 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income from egg sales (\$43,386) and Boer goat sales (\$1,125). The total pasture raised eggs produced was 93,299 (86,769 usable, 6,530 cracked/thin shelled) resulting in 7,231 dozen eggs sold.”

Exhibit H.3 at 17, 20 and 21.

Based on the statements above, the Schedule F for the amended 2020 filing provided by the applicant on May 2, 2025 corresponds to the 2020 sales figures described in the applicant’s August 12, 2022 hearing letter, Exhibit H.3. Because of the condition’s reference to “year(s)” and the “sales figures noted in the narrative,” Staff reads Condition 1 to require an IRS Schedule F associated with the \$16,625 in sales from 2021 described in the application narrative, Exhibit A.3. At the time of issuing this staff report, the applicant has not provided that information.

2. Did the Hearings Officer intend for Condition 1 to allow the applicant to rely on an IRS Schedule F from an amended filing created after the Hearings Officer’s 2023 decision?

For the purpose of “demonstrating that the subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales” required by law, Condition 1 requires the applicant to “submit an IRS Schedule F ... *in order to demonstrate that* the farm activity on the property met or exceeded” those gross sales limits. (emphasis added). Again, the condition explains that “[t]he income required by this condition is set at the time of the filing of this application which was August 18, 2021.” For the reasons explained below, Staff seeks clarification from the Hearings Officer on whether a Schedule F from an amended filing from 2025 meets the stated purpose and objective of Condition 1 that the applicant submit an IRS Schedule F for the specific purpose of demonstrating, or “in order to demonstrate” that, the farm use met or exceeded the required gross sales limit.

When the Hearings Officer issued Condition 1, the applicant stated and implied that he had already filed IRS Schedule Fs associated with the sales figures asserted in the applicant’s testimony. It is Staff’s understanding that the Hearings Officer wrote Condition 1 to require the applicant to provide copies of the IRS Schedule F’s that the applicant had already filed with the IRS for the purpose of verifying the farm income that the applicant asserted was earned as of August 18, 2021. *See 1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384, 405, 752 P2d 271 (1988) (a “county cannot expect that any unsupported assertion that is entered in the record can be used to justify a planning decision.”). In other words, the Hearings Officer sought to confirm that the farm income from the IRS filings previously referenced to by the applicant supported sales figures asserted by the applicant in the application narrative.

In its August 12, 2022 hearing statement, the applicant referenced a 2020 Schedule F, and stated that the applicant had copies of a 2020 Schedule F that the applicant filed with the IRS in 2021:

“The Reeds can provide the County access to past years federal income tax Schedule F, as they have done in the past for the County under separate cover. Below is a summary of 2020. In 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income....”

* * *

“The Reeds can provide the 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income under separate cover.”

Exhibit H.3 at 17, 21.

The Hearings Officer initially denied the applicant’s application because “[t]he Appellants submittal stated that they would provide Tax form Schedule F to prove income,” and “[t]his has not been done.” The Hearings Officer concluded that “this information was ‘crucial’ for the decision.” September 29, 2022 HO Decision, Case No T2-2021-14981 at 12. In the hearing following a stipulated remand from LUBA (*Reed v. Multnomah County*, ___ Or LUBA ___ (LUBA No 2022-097, February 22, 2023)), the applicant did not provide a copy of the previously referenced Schedule F filed for 2020. Instead, the applicant presented a nine-year-old schedule F from a different farm operation along with new information for 2022 sales and information taken from a draft or non-final 2022 Schedule F. August 15, 2023 HO Decision, Case No T2-2021-14981 at 6. The Hearings Officer sought “a definitive statement from an accountant of actual income received,” and “a current or more recent schedule F” than the nine-year-old Schedule F that the applicant had submitted. *Id.* at 7. The Hearings Officer explained as follows, the ultimate decision to impose Condition 1 and allow the applicant to submit additional information to provide documentation of the asserted farm income:

“it will require another hearing to determine whether the standard is met but it will give the applicant time to produce a finalized schedule (F) and their accountants to review and vet financial information as to farm income.”

Id. at 8.

The Hearings Officer issued a final decision with Condition 1 in August 2023. Instead of taking the straightforward step of obtaining and submitting a copy of the Schedule F from the applicant’s original tax filings—which the applicant previously claimed in August 2022 to have been able to provide—the applicant appears to have taken the subsequent and seemingly unnecessary step of filing an amended 2020 filing with the IRS in February 2025. The applicant then appears to have provided a copy of the Schedule F associated with the amended 2020 filing with the May 2, 2025 submission in this proceeding. In this context, it is not clear to Staff that an amended IRS filing, filed in 2025, actually “demonstrates”—consistent with the purpose of Condition 1—that the 2020 sales figures previously asserted by the applicant are accurate (Exhibit H.3) or that the farm use met or exceeded sales limit required by Condition 1 and OAR 660-033-0135. Without the original filing, Staff is not in a position to rule out the possibility that the applicant submitted an amended IRS return for the purpose of conforming the information on the amended return to the sales asserted in the applicant’s testimony, rather than the other way around. For those reasons, Staff seeks clarification from the Hearings Officer regarding the intent and meaning of Condition 1 and whether the applicant’s May 2, 2025 submission is sufficient to demonstrate compliance with Condition 1 and OAR 660-033-0135 for the 2020 sales figures. *1000 Friends*, 305 Or at 405.

3. Does Condition 1 require the applicant to submit a verified or certified IRS Schedule F?

Staff seeks clarification about whether Condition 1 requires the applicant to submit a “finalized” IRS Schedule F discussed in the Hearings Officer’s 2023 decision (quoted above). In that context, Staff interprets Condition 1 to require the applicant to submit a copy of a Schedule F that was actually filed and that the IRS has verified or certified as having been filed. A certified copy of the applicant’s entire tax filing, including the Schedule F, can be obtained using Form 4506. The applicant submitted a Form 4506 for the 2020 income tax filing. The applicant has not provided an IRS verified or certified copy of the Schedule F for 2020 or 2021.

Instead, the applicant has provided a 2020 Schedule F along with a letter from their accountant that states that the accountant “prepared” the Schedule F “with the 2020 tax returns” for the applicant. For what it’s worth, the accountant does not confirm that the Schedule F was filed. The accountant also states that they have “not audited, reviewed or otherwise verified the information provided by [the applicant].” Staff seeks clarification on what the Hearings Officer sought from the applicant by providing the applicant time to produce a “finalized” IRS Schedule F, and whether the documentation that the applicant submitted on May 2, 2025 is sufficient for the purposes of complying with Condition 1 and “demonstrating” compliance with the gross sales limit.

The following exhibits were redacted for privacy: Exhibits AA.14, AA.15 and AA.16.

3.0 Exhibits

‘AA’ Applicant’s Exhibits

‘BB’ Procedural Exhibits

All exhibits are available for digital review by sending a request to LUP-comments@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
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AA.1	2	Application Form	02.18.2025
AA.2	1	2020 Schedule F	02.13.2025
AA.3	17	Recorded Hearing Officer Decision	02.13.2025
AA.4	8	Stormwater Drainage Control Certificate	02.13.2025
AA.5	7	Septic Review Certification	02.13.2025
AA.6	2	Building Height Letter	02.13.2025
AA.7	7	Driveway Permit	02.13.2025
AA.8	5	Exterior Light Details	02.13.2025
AA.9	9	Wildlife Conservation Plan	02.13.2025
AA.10	2	Fire Service Agency Review	02.13.2025
AA.11	14	Site Development Plans	02.13.2025
AA.12	4	Recorded Waiver	02.13.2025
AA.13	1	Reed Memo	05.02.2025
AA.14	3	Attachment 1 – 2020 Schedule F & Letter from CPA	05.02.2025
AA.15	3	Attachment 2 – IRS Form 4506 & USPS Certified Mail Receipt	05.02.2025
AA.16	3	Attachment 3 – 2020 IRS Account Transcript	05.02.2025
AA.17	18	Goat Listings	05.02.2025
AA.18	40	Order Confirmations for Chickens	05.02.2025
AA.19	2	2022 Affidavit of Farm Work	05.11.2025
AA.20	2	Letters of Support	05.11.2025
‘B’	#	Administration & Procedures	Date
BB.1	2	Hearing Notice	05.23.2025
BB.2	1	Staff Report	05.30.2025