

1600 SE 190th Avenue, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF APPEAL

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. The county's case file number and date the decision to be appealed was rendered.
2. The name, mailing address, and daytime telephone number for each appellant.
3. A statement of how each appellant has an interest in the matter and standing to appeal.
4. A statement describing the specific reason for the appeal which includes the criteria or standard the appeal is addressing.
5. The appropriate appeal fee.

It is the responsibility of the Appellant to complete a Notice of Appeal as set forth in the Multnomah County Code. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on this form.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

Name: Schiller & ff, Angela, _____
Last First Middle

Address: 23818 NW Oak Island Rd Portland OR 97231
Street or P.O. Box City State Zip Code

Telephone: (503) 318 - 4923 (Day) or (____) _____ - _____

Fax: N/A Email Address: SiKennels@aol.com

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

Name: Stamp, Andrew, H.
Last First Middle

Address: 4248 Galwood Street, Lake Oswego, OR, 97035
Street or P.O. Box City State Zip Code

Telephone: (503) 675 - 4318 (Day) or (____) _____ - _____

Fax: 503 675-4318 Email Address: andrew@stampaw.com

See exhibit B.

(over)

DECISION BEING APPEALED

CASE INFORMATION

Decision being appealed (e.g., denial of a NSA Site Review, approval of a SEC permit, etc.): See Exh. D
"LOT OF RECORD VERIFICATION" / Request for "AG USE Pole Barn"

Case Number: T2-2022-15537 Date of Issuance of Decision: 30 June 2022

APPEAL INFORMATION

Answer each question as completely and specifically as you can. (Attach separate sheets if needed)

1. What is your interest in this decision? (State your interest in the matter and your standing to appeal)

See Exh. A

2. What are your objections to the decision? (State the specific grounds for the appeal, i.e. criteria or standard)

See Exh. A

Standing to appeal: those who are entitled to appeal a decision include those who are entitled to notice under Multnomah County Code and include: owners of record of property within 750 feet of the subject tract, neighborhood associates, and persons who have identified themselves in writing as interested parties or as to be potentially aggrieved or impacted by the decision.

SIGNATURE: Andrew H Stamp DATE: 14 July 2022

CHECK ONE: APPELLANT AUTHORIZED REPRESENTATIVE

Appeals and fees must be received prior to the close of the appeal deadline.

Deliver or mail appeal and fee to:
MULTNOMAH COUNTY
Land Use Planning Division
1600 SE 190th Ave., Suite 116, Portland, OR 97233
Phone: (503) 988-3043

Appeal Notice

FOR STAFF USE ONLY	
Fee: Notice of Appeal for Planning Director's Decision: \$250.00	
Received by: _____	Date: _____

DECISION BEING APPEALED

CASE INFORMATION

Decision being appealed (e.g., denial of a NSA Site Review, approval of a SEC permit, etc.):

Case Number: _____ Date of Issuance of Decision: _____

APPEAL INFORMATION

Answer each question as completely and specifically as you can. (Attach separate sheets if needed)

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SIGNATURE: Angela J. [Signature] DATE: July 13, 2022

CHECK ONE: APPELLANT AUTHORIZED REPRESENTATIVE

Appeals and fees must be received prior to the close of the appeal deadline.

Deliver or mail appeal and fee to:
MULTNOMAH COUNTY
Land Use Planning Division
1600 SE 190th Ave., Suite 116, Portland, OR 97233
Phone: (503) 988-3043

Appeal Notice

FOR STAFF USE ONLY	
Fee: Notice of Appeal for Planning Director's Decision: \$250.00	
Received by: _____	Date: _____

EXHIBIT A

(Attachment to Notice of Appeal, Case File T2-2022-15537)

Appellant Information.

1. Appellant.

Second Appellant:

Nick Rossi
10718 SE Waterford Court
Happy Valley OR 97086
Phone 503.318.4323
Fax: N/A.
Email: Nick@NickRossi.com

Third Appellant:

CS Reeder LLC

Appeal Information.

1. What is your interest in the decision? (State your interest in the matter and your standing to appeal).

The appellant is both the applicant and the property owner of the subject property T2N, R1W, Section 4, Tax Lot 900. An applicant has standing to file an appeal of a staff decision to the Hearings Officer.

2. What are your objections to the decision? (State the specific grounds for the appeal, i.e. criteria or standard).

The applicant applied for approval of a "Ag Use Pole Barn." See Application Form at Exhibit C. The Multnomah County Zoning Code (MCZO) refers to this type of structure as an "Agricultural Building," as follows:

Agricultural Building – Pursuant to ORS 455.315 and any amendments made thereto, means a structure located on a farm and used in the operation of the farm for: (a) Storage, maintenance or repair of farm or forest machinery and equipment; (b) The raising, harvesting and selling of crops or forest products; (c) The feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees; (d) Dairying and the sale of dairy products; or (e) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination thereof, including the preparation and storage of the produce raised on the farm for human use and animal use, the preparation and storage of

forest products and the disposal by marketing or otherwise, of farm produce or forest products. (f) Agricultural and forest practice buildings do not include a dwelling, a structure used for a purpose other than growing plants in which 10 or more persons are present at any one time, a structure regulated by the State Fire Marshal pursuant to ORS chapter 476, a structure used by the public, or a structure subject to sections 4001 to 4127, title 42, United States Code (the National Flood Insurance Act of 1968) as amended, and regulations promulgated thereunder.

Generally speaking, Agricultural Buildings do have to comply with zoning requirements. Typical standards that must be complied with include building setbacks from property lines, maximum height limitations, and vehicle access requirements. However, because Agricultural Buildings are a “farm use,” no land use permitting is required. Rather, an Agricultural Building is a “use allowed by right” under both state and local law. See MCZO §39.4220(A) (Listing “farm use as defined in ORS 215.203” as an allowed use.).

This application is governed by ORS 215.203 and ORS 215.283. ORS 215.203 authorizes counties to adopt EFU zones. In those zones, land is to be used exclusively for farm uses “except as otherwise provided in ORS 215.213, 215.283 or 215.284.” ORS 215.203(1).

215.203 Zoning ordinances establishing exclusive farm use zones; definitions.

(1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

In this case, the applicant is seeking to use the property for “farm use” but the decision under appeal prohibits the applicant from using that land for farm use. ORS 215.203(2)(a) provides the state’s definition of “farm use,” as follows:

(2)(a) As used in this section, “farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm use” also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. “Farm use”

also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. “Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).

As underlined above, ORS 215.203(2)(a) expressly defines “farm use” to permit “on-site * * * equipment and facilities” used for “farm use.” The term “facility” is defined by the dictionary as “something (as a hospital, machinery, plumbing) that is built, installed, or established to perform some particular function or to serve or facilitate some particular end.” See Webster’s Third New International Dictionary (Unabridged) (2002), at p. 812-813. LUBA has held that facilities used for a farm purpose, such as effluent ponds, constitute a “farm use,” even if it is possible to locate such equipment and facilities on land outside the EFU zone. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999). On this basis alone, it does not appear that the County has any authority to deny a landowner the right to engage in a farm use, including building an Agricultural Building consistent with setbacks, building height, and similar land use standards.

Nonetheless, in this case, the applicant submitted the land use application for the Agricultural Building, after staff requested that they do so. In this regard, it is unclear why the decision under appeal (attached at Exhibit D) states that the applicant “requests” a lot of record verification application. It is our understanding that staff raised the Lot of Record issue *sua sponte*.

This conclusion that a pole barn used for farm use is itself a farm use allowed by right in the EFU zone is reinforced by OAR 660-033-0120. This rule, which is entitled “Uses Authorized on Agricultural Lands,” states:

The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:

- (1) “A” Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130 and 660-033-0135. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.***

(2) "R" Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

The accompanying table makes clear that both farm uses and "other buildings customarily provided in conjunction with farm use" are an allowed use that do not require "review."

HV Farmland	All Other	Uses
		Farm/Forest Resource
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R5,6	R5,6	A facility for the primary processing of forest products.
A28	A28	A facility for the processing of farm products with a processing area of less than 2,500 square feet.
R28	R28	A facility for the processing of farm products with a processing area of at least 2,500 square feet but less than 10,000 square feet.

It is unclear why the decision assumes that no farm use may occur on land unless that land qualifies as a Lot of Record. Although the decision does mention it, one possible source of authority is MCZO §39.4215. This section of the code is applicable to EFU land and is entitled "Uses." It provides:

§ 39.4215 USES. No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this base zone for the uses listed in MCC 39.4220 through 39.4230 when found to comply with MCC 39.4245 through 39.4260 provided such uses occur on a Lot of Record.

The single sentence that comprises MCZO 39.4215 is grammatically incorrect and makes no sense. It starts out as a prohibition ("no * * * land shall be used," but ends as a statement of permission: "provided such uses occur on a Lot of Record." It is possible that the provision is intended to prohibit any "use" of a property that is not a "Lot of Record." This seems particularly harsh interpretation, since it would prohibit the property from being used for the listed use "farm use, as defined in ORS 215.203." Such an interpretation seems to run afoul of both state law, ORS 215.203, and MZCO §39.4200, which states that the purpose of the Lot of Record requirement is an implementing tool intended to preserve and maintain agricultural lands for farm use. Given this policy goal, the applicant asserts that this provision does not serve to limit the use of land which is not deemed to be a "Lot of Record," and does not limit the construction of Agricultural Buildings to land determined to be a "Lot of Record."

The decision under appeal concludes that the subject property, T2N, R1W, Section 4, TL 900, is not a “Lot of Record” due to the lot aggregation provisions set forth at MCZO 39.3070(A). The decision concludes that the subject property is “aggregated” for development purposes with the 157-acre dairy farm (T2N, R1W, Section 3, TL 400), located to the east of the subject property.

The decision states the following:

On February 20, 1990, the subject property was owned by Richard W & Evelyn S Vetsch (Exhibit B.4). Richard W Vetsch owned tax lot R971030130 which is immediately adjacent to the subject property to the east.

* * * * *

Both tax lots are zoned Exclusive Farm Use (EFU). Based upon MCC 39.3070(A)(2)(b)2. It would appear that these two tax lots are aggregated by the Lot of Record provisions. At present they are in separate ownership (Exhibit B.1 & B.8). *Criterion not met.*

The above-quoted passage is factually incorrect in one particular. On February 20, 1990, the subject property was owned by Evelyn S. Vetsch. See Bargain and Sale deed dated February 15, 1990, Book 2388, Pg 990, Recorded February 21, 1990.¹ Exhibit E. Evelyn’s husband, Richard W. Vetsch, owned tax lot R971030130 which is immediately adjacent to the subject property to the east. On February 20, 1990, the definition of “Same Ownership” was as follows:

Same Ownership refers to parcels in which greater than possessory interests held by the same person or persons, spouse, minor age single partnership or business entity, separately or in tenancy in common.

It is unclear whether, under this definition, a parcel owned by a wife is in the “same ownership” as a contiguous property owned by a husband. The decision under appeal does not address this issue because of the factual error.

If a pole barn is not considered a “farm use,” then by default it is a use allowed by right under ORS 215.283(1) as a building customarily provided in conjunction with farm use. ORS 215.283(1) lists 23 uses that counties must allow on EFU land, subject to state standards adopted by the Land Conservation and Development Commission (LCDC). The 23 uses listed in ORS 215.283(1) are authorized as of right, and counties may not restrict those uses through additional local standards. See *Brentmar v. Jackson County*, 321 Or. 481, 496, 900 P.2d 1030 (1995). *Brentmar* establishes that nonfarm uses in EFU zones permitted by ORS 215.283(1) are “uses as of right” that are not subject to county regulations that go beyond those set forth in the statutes.

In contrast, ORS 215.283(2) lists nonfarm uses and structures that are conditionally

¹ Note that the recording date has no relevance as to when ownership was transferred. The deed was effective upon delivery.

authorized and that must satisfy ORS 215.296(1), which practitioners refer to as the farm impacts test. As summarized by former land use attorney Edward J. Sullivan and DLCD staff member Ron Eber:

Authorized non-farm uses are subject to local land use approval. Between 1961 and 1973, no distinction was made between the type of review or the standards applicable to the approval of the allowed uses. But in 1973, the uses allowed were divided into two categories. The first category was the “permitted” uses that a county was required to authorize in its EFU zone without applying any additional review standards, other than those provided by statute. The second category included the larger and more intensive non-farm uses allowed through a discretionary process. Except for non-farm dwellings, local review and approval standards were left to the discretion of the local county planning authorities.

Edward Sullivan and Ronald Eber, “The Long Winding Road: Farmland Protection in Oregon 1961-2009,” SAN JOAQUIN AG. L. REV. VOL 18, No. 1 (2008-2009).

One of the “Sub-1” uses is set forth at ORS 215.283(1)(e). This statute provides:

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use:

* * * * *

(e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

By applying the lot aggregation provision to parcels less than 19 acres, the County in essence adds a minimum lot size provision that is not found in ORS 215.283(1)(e) or in the definition of farm use. This violates the rule set forth in *Brentmar*.

Finally, even assuming, *arguendo*, that the two parcels at issue were in the “same ownership” on February 20, 2022, the lot aggregation provisions are not self-executing, and because no permit was applied for while the property was in such same ownership. The subject property is now in different ownership, and therefore was never “aggregated” with the dairy at any time when it was arguably in such same ownership.

Exhibit B

CS Reeder LLC
23818 NW Oak Island Road
Portland, Oregon 97231

July 13, 2022

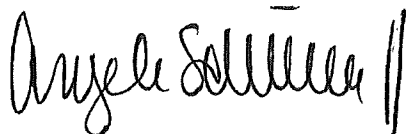
Multnomah County
Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233

RE: 22140 NW Reeder Road
Tax account #R971040090

Dear Sir/Madame:

Andrew Stamp is an authorized representative of CS Reeder LLC for the purposes of this land use appeal.

Yours,

A handwritten signature in black ink that reads "Angela Schillereff" followed by two vertical lines.

Angela Schillereff
Manager

Exhibit B

HOME

OREGON SECRETARY OF STATE

Corporation Division



Business Xpress

business name search

oregon business guide

license directory

business registry/renewal

forms/fees

notary public

uniform commercial code

uniform commercial code search

documents & data services

Business Name Search

[New Search](#)[Printer Friendly](#)

Business Entity Data

07-14-2022

13:39

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
1899060-93	DLLC	ACT	OREGON	12-01-2021	12-01-2022	
Entity Name	CS REEDER LLC					
Foreign Name						

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Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS			
Addr 1	23818 NW OAK ISLAND RD				
Addr 2					
CSZ	PORTLAND	OR	97231	Country	UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	05-26-2022	Resign Date	
Name	ANGELA	SCHILLEREFF				
Addr 1	23818 NW OAK ISLAND RD					
Addr 2						
CSZ	PORTLAND	OR	97231	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS				
Addr 1	23818 NW OAK ISLAND RD					
Addr 2						
CSZ	PORTLAND	OR	97231	Country	UNITED STATES OF AMERICA	

Type	MGR	MANAGER				Resign Date	
Of Record	899091-97	CORBETT-SPRINGDALE LLC					
Addr 1	23818 NW OAK ISLAND RD						
Addr 2							
CSZ	PORTLAND	OR	97231	Country	UNITED STATES OF AMERICA		

[New Search](#)[Printer Friendly](#)

Name History

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Business Entity Name	Name Type	Name Status	Start Date	End Date
CS REEDER LLC	EN	CUR	12-01-2021	

Please [read](#) before ordering [Copies](#).

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Summary History

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-26-2022		FI	Agent	
	ARTICLES OF ORGANIZATION	12-01-2021		FI	Agent	

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