

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning)
Commission's Approval and Denying the Appeal)
of Docket E-02-18; Approval of a Permit to Allow)
up to 18 Agri-tourism/Commercial Events per) Board Order 18-441
Calendar Year on Property located at 30203 NE)
Benjamin Road, Tax Lot 3215-500, Applicant:)
Christian DeBenedetti)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 6, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson, and Stan Primozech being present.

IT APPEARING TO THE BOARD as follows:

A. On March 9, 2017, the Board approved an application dated August 30, 2016, made by Christian DeBenedetti, to allow up to 18 "agri-tourism" events at the Wolves and People Farmhouse Brewery. The brewery is operated under a previously-granted Conditional Use Permit in an historic barn located at 30203 NE Benjamin Road, Newberg. The property, also identified as Tax Lot 3215-500, is approximately 21.53 acres in size and is zoned EF-20. The agri-tourism event approval was for one year, with a condition stating that it may be renewed for an additional four-year period;

B. On March 7, 2018, Mr. DeBenedetti applied for a four-year renewal of his prior approval. A hearing was requested, and held on August 2, 2018, before the Planning Commission. Following the hearing, the Planning Commission voted unanimously (7-0) to approve the application; and

C. The Planning Commission's decision was appealed to the Board. Following a hearing held on November 8, 2018, the Board voted unanimously (3-0) to uphold the Planning Commission's decision, deny the appeal and approve the application; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Commission's decision to approve Docket E-02-18 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of, and as part of, this order.

DONE this 6th day of December, 2017 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS



BRIAN VAN BERGEN
County Clerk

Chair

MARY STARRETT

By:
Deputy Carolina Rook

Commissioner

RICHARD L. "RICK" OLSON

FORM APPROVED BY:

Timothy S. Sadlo
Senior Assistant County Counsel

Commissioner

STAN PRIMOZICH

**EXHIBIT A – BOARD ORDER 18-441
FINDINGS FOR APPROVAL AND CONDITIONS**

DOCKET NO.: E-02-18

REQUEST: Four-year renewal of a permit allowing up to 18 agri-tourism/commercial events per calendar year on property located at 30203 NE Benjamin Road.

APPLICANT: Christian DeBenedetti

OWNER: Charles J. McClure

TAX LOT: 3215-500

LOCATION: 30203 NE Benjamin Road, Newberg

ZONE DESIGNATION: EF-20, Exclusive Farm use

REVIEW CRITERIA: Section 1013.01(A)(4) of the Yamhill County Zoning Ordinance and Oregon Revised Statute 215.296

FINDINGS:

A. Background Facts

1. *Lot Size:* 21.53 acres
2. *Access:* NE Benjamin Road, a paved County road.
3. *On-Site Land Use:* The parcel currently has a brewery and tasting room, a residence, guest house and a hazelnut orchard.
4. *Surrounding Land Use and Zoning:* The surrounding properties to the north, south and east are all zoned EF-20 Exclusive Farm District and are generally farm parcels that contain orchards, vineyards and forested areas. Properties to the southwest are in the City of Newberg and zoned for commercial or residential uses. Properties to the west and northwest are zoned VLDR 2.5 and contain rural residential uses.
5. *Water:* Provided by an on-site well.
6. *Sewage Disposal:* There is an on-site septic system serving the dwelling. The applicant also has two indoor bathrooms in the brewery. The County Sanitarian has approved the system serving the brewery for up to five employees and 50 tasters, and has noted that accommodating more than 50 tasters would require portable toilets.
7. *Fire Protection:* Newberg Rural Fire District.

8. *Previous Actions:* The property has an extensive list of previous land use actions that are in the tax lot file. The most relevant land use decisions include an approval for the establishment of a winery in the barn, which now houses the applicant's brewery and tasting facility (Docket C-05-00/SDR-06-00) and the approval for the brewery and tasting room (Docket C-10-14). Docket C-16-89 allowed for a home occupation bed and breakfast on the property that is no longer operating. On March 9, 2017, the Board adopted Board Order 17-74, upholding the Planning Director's approval to allow 18 Agri-tourism/Commercial events per calendar year on the subject property. Under the conditions of approval, the applicant was allowed to cater/host with a food cart up to 18 beer-tasting events. Condition number nine of the conditions of approval stated that the approval would expire in one year, but could be renewed for a four-year period subject to a renewal application and compliance with the conditions of approval and the standards of Section 1013 of the Yamhill County Zoning Ordinance.
9. *Applicant's Request:* The request is to renew the previously approved agri-tourism event permit. The brewery and tasting room were approved in 2014, and those approvals are not affected by this application or its approval. The events are meant to showcase an historic Yamhill County farm property and the beers that are produced in an historic barn on the property.

B. Ordinance Provisions and Analysis

1. The county's original decision to approve agri-tourism events on the subject property was based on the applicant's demonstration of compliance with the review criteria in section 1013 (1013, 1013.1 and 1013.2) of the Yamhill County Zoning Ordinance. Section 1013 was established by Ordinance 871, and allows "agri-tourism" and "other commercial" events in farm zones, in a manner that reflects authority granted to the county to approve such events by ORS 215.283(4). Section 1013 states:

"Agri-tourism and other commercial events or activities related to and supportive of agriculture may be approved in an area zoned for exclusive farm use subject to the standards and criteria in this section. Any permitted event or activity is personal to the applicant and is not transferred by, or transferrable with, a conveyance of the tract."

The subject property is 21.53 acres. The predominant use of the property is as a hazelnut orchard. Claims by some opponents that the predominant use of the property is not its use as a hazelnut orchard, using various metrics, are specifically rejected by the county. The previously approved brewery and tasting room are contained in an existing historic barn, with some seating outside, adjacent to the barn. The applicant is requesting permission to serve food, catered and/or from a food cart, for up to eighteen 72-hour periods, during which the brewery will typically be open for a total of 18 hours. Food service is a "commercial" event or activity and, in this case, may also be characterized as an "agri-tourism" event or activity, due to the location of the brewery (in an historic barn adjacent to a filbert orchard) and because the applicant has indicated that the events are for beer

tasting, with a food truck (or other caterer) to provide food. The brewery produces beer made with recipes that include ingredients grown on-site such as hops, fruits, filberts, conifer and strains of wild yeast. The applicant has also planted grain crops on site, and is coordinating with Oregon State University to grow experimental varieties of barley on the site. Testimony in the record indicates that barley was once a major crop in the Willamette Valley, enough to support successful malting facilities. The applicant stated he is seeking to determine the viability of using more grains grown on the property in the beer produced on site, or of making beer entirely with grains grown on site. Outside seating adjacent to the barn and facing the filbert orchard showcases the natural beauty of rural Yamhill County and presumably encourages patrons from outside the county to return for other agri-tourism events or to visit other agri-tourism venues. In this way, the proposed events are “related to” and “supportive of” agriculture.

The application was made under Subsection 1013.01(A)(4) of the Yamhill County Zoning Ordinance, which states:

“4. In the alternative to 1, 2 and 3 above, up to 18 events on a tract may be permitted in a calendar year subject to the following:

a. The events or activities are incidental and subordinate to existing farm use on the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area and;”

2. To address this standard the applicant was asked to: 1) Describe the existing commercial farm use of the tract. He responded: “Springbrook Farm is owned by Charles & Ellen McClure and the filbert operation is run by their contractor Matt Miller, and produces a healthy crop of filberts on 10 farmed acres each season. Some of these filberts are used in two beer recipes so far and surely more to come. Also grown on the farm and used in the brewing process (and certain agritourism events, where seasonally available) at times are: hops (6 varieties), figs, currants, plums (three varieties), blackberries, melons, many varieties of garden vegetables, and two new bee colonies which should yield honey by this fall. Cherries, peaches, and apricots are planted but not yet mature. We plan to plant many more varieties of stone fruits in the future which will be used in many barrel-aged beers.”

Next the applicant was asked to: 2) Explain how the events are incidental and subordinate to the existing commercial farm use of the tract. The applicant responded: “The primary year-round activity on Springbrook Farm is clearly filbert farming at this time, and under our conditional use permit, brewing is also going on successfully. The other crops, while carefully tended, do not approach the tonnage of filberts that are harvested each year. Having a small number of agritourism events on the property has no impact on filbert farming and does not encroach on any other kinds of farming in any way. In fact, the events are encouraging more plantings of fruits and vegetables that could play a bigger role in future agritourism events, such as melons or vegetables for chefs to prepare in their licensed kitchens and present to guests. There were only 14 days of events in the calendar

year 2017, far below our allowed number of 54 days. We believe it is clear that we are not pressuring the permit so to speak. It is very difficult to find chefs and food carts of an appropriate quality for our operation.”

And lastly, the applicant was asked to: 3) Explain how the events are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area. The applicant responded: “All seven of our events employed local chefs who use local produce from local farms, from local beef and pork to Oregon coast oysters and many fruits and vegetables. They were not serving junk food made in out of state factories but healthful, local products. By hiring locals who use local produce, we continue to support the local farming and hospitality industries.”

The events will be held in conjunction with the tasting of beer produced on site in an historic barn and in a seating area adjacent to the barn. Testimony received by the county that questioned whether the property is in farm use is rejected by the county as not credible. The county finds credible, and accepts, the applicant’s statements and other testimony in the record indicating that the property contains a filbert orchard and that other crops grown on the site by the applicant and/or the owner include those listed above that are used in the production of beer. The property is currently employed for the primary purpose of obtaining a profit in money by raising, harvesting and selling hazelnuts as well as a variety of other farm products that can be, and are, used to make and flavor beer.

The statute and county ordinance allow “events” or “activities” that are “incidental” in relation to the “existing farm use on the tract.” Like the dictionary, the county considers “incidental” to mean “subordinate, nonessential, or attendant in position or significance: as * * * occurring as a minor concomitant” (Webster’s Third New international Dictionary). Events or activities that are incidental to existing farm uses would be those that are less important, and subordinate to the existing farm uses on the tract.

The county finds that the proposal to have a single food cart operating on the site, for no more than 72 hours per “event,” no more than 18 times per year, is unquestionably incidental to the existing farm uses taking place on the property. The hours of operation at the brewery are Friday, 4-9 p.m., Saturday, 2-10 p.m. and Sunday 12-5 p.m. A condition of approval requires that the events end by 9:00 p.m., meaning that the food cart will operate fewer than the 72 hours allowed under the statute and ordinance. Under the approval granted by the county, the applicant can only operate the food cart over the course of 54 days out of the 365 available. Farm uses take place on the property 365 days per year. By infrequency alone, the operation of the food cart as allowed under the approval is incidental to the farm use of the property. The infrequency of operation also supports the county’s conclusion that operation of the food cart is a “minor concomitant” when compared to the continued predominant use of the property to produce filberts and the other crops identified by the applicant.

As noted above, the dictionary definition of “incidental” contains the phrase “subordinate to.” There are degrees of subordination, ranging from ‘extremely minor’ in comparison

to the main use, or 'just barely' less, or less important, than the main use. The county interprets "subordinate" as used in the statute and ordinance to mean that the events or uses are clearly less important or less dominant than the main use. The approval allows service by a caterer or food cart at the site of an existing, approved brewery adjacent to a filbert orchard, for up to eighteen-72 hour periods per year, during which the events will take place for no more than 18 hours during the 72-hour period. Both the previously approved brewery and the service of food at the level approved by this Order are clearly subordinate to the existing farm uses on the 21-acre site. The "commercial farm uses" on the property include the filbert orchard, along with other fruits and vegetables raised on the property that are sold or used in the production of beer. The brewery is a permitted 'commercial use in conjunction with farm use' that cannot be collaterally attacked in this proceeding. The "commercial agricultural enterprises in the area" include the production of crops, including filberts and grapes. Other agriculturally related uses, including wineries, benefit from visitors to the county, who might come to sample beer at the brewery, and from their visit decide to return and visit other locations in Yamhill County that make wine, or sell other farm products, or market direct 'farm to table' or 'farm to fork' dining. The intent of the applicant is to feature, in the food served, locally produced food products. The applicant also indicated that spent grain from the brewery is provided to an area farmer who raises high quality pigs and produces bacon and other specialty pork products. He also stated that he plans to grow more of the ingredients used to make and flavor beer as the business grows, such as peaches, apricots, cherries, additional hops and grains, including barley. In the original hearings in this matter and as reflected in Board Order 17-74 approving the original permit, extensive testimony was received by the county in support of the brewery, from persons who live within, and outside of Yamhill County, suggesting that the brewery is already benefitting the agri-tourism industry in the county, and thus the agricultural industry in the county. At the same time, the applicant and others indicated that starting and maintaining a small business is difficult and tenuous. It is appropriate that the county do what it can, under statutory and ordinance authority, to allow small business/agricultural producers to promote the agricultural economy of the county and the natural beauty and products of the county's farms, when it can be done with minimal impact to surrounding uses. In this case, the opponents provided no credible testimony or evidence establishing that they, or their properties, are negatively impacted by the presence of the brewery and tasting room, or by the catered/food cart events that have taken place over the last year.

"Necessary" generally means "absolutely needed." The applicant presented testimony that agri-tourism generally, and events promoting agriculture at the proposed site specifically, are necessary to support commercial farm uses taking place on the property, and/or are necessary to support the commercial agricultural enterprises in the area. The county interprets the term "necessary" to be more than merely "convenient." At the same time, a literal interpretation of the requirement could very well result in the inability of any agri-tourism or commercial use to qualify for approval. The intent of the statute and of the ordinance is to provide an opportunity for farm owners to make economic use of their farms by sponsoring events of the kind that wineries can already sponsor and conduct. Considering the especially limited, low-impact request being made in this instance, there

is no basis for interpreting “necessary,” as used in the statute and in the county’s ordinance, in a manner that makes the standard impossible to meet. Extensive testimony was received regarding the difficulty of maintaining and profiting from a small filbert orchard like the one on the subject property. In this case, revenue from the brewery supplements revenue from the remainder of the farm operation and helps to maintain the viability of the property as a farm. The events augment the revenue from the brewery, further contributing to the overall viability of the farm. The county finds that the 18 proposed events are necessary for the applicant and landowner to continue to make a profit in money from farm uses taking place on the property.

The county also finds that agri-tourism is, and will continue to be, an essential component of commercial agricultural enterprises in most areas of the county, and even more so at the point where a major state highway enters the county from the Portland metropolitan area. The brewery property is adjacent to the largest winery in the county. Agri-tourism is a necessary component of the county’s wine industry and other commercial agricultural enterprises taking place in the county. The ability to market county products to consumers from lands on which they are produced is necessary to support the county’s commercial agricultural enterprises. In this case, the applicant has demonstrated that the proposed 18 food service events to take place in conjunction with operation of his previously approved brewery are incidental and subordinate to existing farm use on the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area.

“b. Shall comply with Section 1013.01 (A)(3)(b) through (h) outlined below;

Section 1013.01 (A)(3);

(b) Shall not, individually, exceed 72 consecutive hours;”

Subsection (b) is not an approval standard. None of the events approved under this Order exceed 72 hours and, given the allowed hours of operation are not expected to occupy more than 18 hours of each 72 hour “event.”

“(c) One of the six events may allow the artificial amplification of voice or music from 8 a.m. to 10 p.m.”

Subsections (c) is not an approval standard. The county interprets the limitation of this section as referring to outdoor amplified music capable of traveling off-site. It does not limit the amplified music that might be played inside the barn/brewery or from small ‘bookshelf’-style speakers in the outdoor seating area that are played quietly and in a manner that is not projected off of the site. A condition of approval limits the type of amplified music that is limited by this subsection to a single event per year during the hours of noon to 8 p.m.

“(d) Shall comply with ORS 215.296;”

ORS 215.296 requires that the local governing body approve uses listed in ORS 215.283(4) only if it 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.”

Subsection (2) of ORS 215.296 states:

“(2) An applicant for a use allowed under ORS 215.213(2) or (11) or 215.283(2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.”

Under this standard, the county is required to identify the accepted farm and forest practices occurring on surrounding farm and forest lands, and to then consider whether the proposed use will force a significant change in, or significantly increase the cost of, those practices. The “surrounding lands devoted to farm or forest use” include all of the abutting farm parcels east of Benjamin Road. For the purpose of this analysis, it is not necessary to consider farm and forest uses taking place south of Highway 99W, because the highway corridor isolates the farm parcel where the events will take place from lands to the south. There is no scenario under which the proposed events could have an impact on farms south of Highway 99W, significant or otherwise.

All of the land west of Benjamin Road is zoned by the county for residential uses, or by the City of Newberg for residential or commercial uses. This analysis therefore focuses on abutting lands that are east of Benjamin Road and north of Highway 99W.

The area of consideration includes, predominantly, orchards, vineyards, and forested hills. Property to the north, like the subject property, contains a large filbert orchard. To the east are vineyards and a large winery. The owner of the vineyards and winery are in support of the applicant, and did not indicate that there are any impacts to their farm or forest uses or practices from the brewery agri-tourism events that have occurred under the permit issued in 2017, or potential impacts from the proposed agri-tourism events.

ORS 215.203 defines “farm use,” and contains the following definition of “accepted farming practice” that is appropriate to reference in this circumstance. ORS 215.203(2)(c) states:

“As used in this subsection, ‘accepted farming practice’ means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.”

Generally, automated machinery and farm labor maintain vineyards and orchards in the area, and that includes the filbert orchard on the subject property. Disking of filbert orchards can create dust, and the use of pesticides and herbicides can create problems for nonfarm uses. No conflicts have been identified that will be caused by the proposed events and that have the potential to impact any farm or forest use or practice in the area.

The proposed use will take place adjacent to a county road and rural residential uses. The use (catered food service) is otherwise buffered on three sides by the farm on which the brewery is located. Approval of the event permit, in this case, will not “force” any of the adjacent or nearby farm users to change any of their farm practices. Benjamin Road is a county road that is capable of accommodating farm and rural residential uses, and to also provide access to neighborhoods in the City of Newberg. The proposed events will not create sufficient traffic to interfere with existing use of the county road or to hinder in any significant way the movement of farm equipment or farm labor on the county road. The applicant’s efforts to run a successful brewery on the site and to supplement farm income, in part by staging events that will bring people onto the site, is evidence that the presence of such people at such events will not interfere, significantly or at all, with the accepted farm practices associated with the operation of a filbert orchard. In like manner, the fact that the brewery operates adjacent to a filbert orchard and that the owner favors events that will likely bring more people onto the site is evidence that the events will not increase the costs of growing and harvesting filberts on the site or elsewhere. As stated, the owner of the neighboring vineyard and winery does not oppose the proposed events (and is collaborating with the applicant to develop a hiking trail between the two facilities), suggesting that no off site impacts are anticipated at the vineyard that might stem from the occasional serving of food at the existing brewery next door. In this instance, the location of the proposed events almost guarantees that there will be no impact whatsoever to off-site agricultural practices or the cost of those practices. This is not a close case. Not only were no impacts alleged to farm practices or costs during the proceedings to consider whether to allow the requested events—there is no reasonable basis for concluding that the events, to take place in an area adjacent to a rural residential area and the City of Newberg to the west; adjacent to a major state highway to the south; and surrounded by on-site filbert orchards to the north and east, will have any impact whatsoever on agricultural practices or the costs of those practices on surrounding lands.

“(e) Shall occur outdoors, in temporary structures, or in existing permitted structures. Shall not require or involve the construction, use or occupancy of a new permanent structure in conjunction with the activities or events;”

Subsection (e) is not an approval standard. The events will take place both indoors, in the existing brewery and tasting room, as well as in an existing outdoor seating area adjacent to the brewery. No new permanent structures are proposed, nor is the construction of any new permanent structure allowed by this Order.

“(f) Shall comply with any applicable health and fire and life safety requirements;”

The proposed events will take place in compliance with all health, fire and life safety requirements, as follows:

Sanitation: The applicant has installed two indoor bathrooms in the brewery. The County Sanitarian has approved the septic system serving the bathrooms for up to five employees and 50 tasters. A condition of approval requires: “During events which exceed 50 attendees the applicant shall provide four portable toilets, with a hand-wash station unless the County Sanitarian approves fewer toilets based on adequate permanent facilities.

Food handling and alcohol service: The applicant is aware of his responsibility to obtain all necessary permits from the OLCC and the Public Health Department. Conditions of approval ensure compliance with these requirements, by requiring that the applicant obtain approval from the OLCC for the service of alcohol, and requiring that “Any food service provided shall be prepared from an approved source that is licensed and inspected by the Public Health Department.”

The county specifically rejects the claims of opponents that the applicant is not in compliance with OLCC regulations. Contrary to testimony received in opposition to the permit in this matter: it is opponents (who know better) who bring obviously false accusations and claims against applicants operating within the law who “pit[] neighbor against neighbor, erode[] confidence in government, and undermine[] the rule of law.”

Parking and Access: There are currently 150 parking spaces available at the brewery, and the maximum expected attendance for the events is 250 people. The amount of parking now available is more than adequate to accommodate the maximum attendance. A condition of approval limits the maximum number of persons that may be on the site during an event to no more than 250. Another condition states: “The maximum number of vehicles at any one time shall not exceed 125 vehicles and an area to provide up to 125 parking spaces shall be maintained during the events. No on-street parking is allowed.” It is feasible for the applicant to park up to 125 vehicles on the site, and the conditions of approval help to ensure that adequate parking areas will be provided. The single access to the brewery was approved by the Public Works Department and the Fire Marshall prior to the opening of the brewery. There are no other allowed access points to the existing brewery, where the events will take place.

Traffic Safety: The property is accessed by NE Benjamin Road, from its nearby intersection with Highway 99W. The entrance to Benjamin Road from the east has good sight distance. A median lane allows safe entry to Benjamin Road from the west. Benjamin Road is narrow and without adequate shoulders, just like almost every other County Road, but sight distance at the entrance to the brewery is also good. Traffic safety is a concern with any land use action. Although the road is generally safe the proximity

of Benjamin Road to an urban area has led to increased use of the road to enter and leave the City of Newberg. After reviewing traffic counts, the County Engineer indicated that they support lowering the speed limit on Benjamin Road from 40mph to 30mph.

Testimony was received indicating that Benjamin Road is unsafe, but evidence in the record supports a conclusion that the level of traffic anticipated to be generated by the proposed events is insignificant, and will have no impact on the safety of NE Benjamin Road. There have not been any traffic accidents related to the brewery or its parking lot entrance since the brewery and its tasting room opened. The county also accepts as credible the applicant's statements regarding the seriousness with which his employees take legal requirements prohibiting service of alcohol to anyone who is visibly intoxicated. The levels of additional traffic anticipated to be generated by the proposed events is *de minimis*, and not anticipated to affect the safety of the public using NE Benjamin Road.

“(g) Shall not, in combination with other agri-tourism or other commercial events or activities in the area, materially alter the stability of the land use pattern in the area; and”

For purposes of this analysis, the “area” includes the land surrounding the barn and outdoor seating area where food service events will take place, and extending approximately one-half mile in every direction. The area could be extended further, but extending it would only bring in additional farm and forest land that is much like the subject property, and additional urban areas. As noted elsewhere in these findings, the area includes land zoned EFU (EF-20) along Benjamin Road to the north and east, containing forested hills, filbert orchards and vineyards. The area under consideration also includes a section of Highway 99W, a four-lane highway with a center median lane and shoulders. There are also forested and farmed hills, agricultural buildings and residences to the south of, and adjacent to 99W, and some of that area is zoned AF-10. The area south of the highway is, effectively, separated from the proposed use by a very busy transportation corridor. Immediately across Benjamin Road to the west are single family, rural residential dwellings, on lands zoned VLDR-2.5. Also just across Benjamin Road are lands within the City Limits of the City of Newberg that are zoned residential and commercial.

The brewery is in an historic barn, and part of a “farm ensemble” that is on The National Register of Historic Places. There is also a residence and guesthouse, a pond, fruit trees and fruit/vegetable/herb gardens in the southwest corner of the property, but the predominant use of the 21.53-acre property is as a filbert orchard. There are forests, filbert orchards, vineyards and a major winery with a tasting room (A to Z Wineworks, zoned Resource Industrial) in the area under consideration for this analysis. A significant level of commercial events and activities take place at the winery and, once constructed, it is presumed that commercial events and activities will take place in areas zoned for those uses within the City of Newberg.

The “land use pattern in the area” is decidedly mixed, including extensive, established farm uses (mostly filberts and grapes) along with rural residential uses and commercial and

residentially zoned land within the City of Newberg. While mixed, the uses appear to be “stable,” in that they are all established or expected to take place in existing zones.

The proposal, once again, is for a use that is not permanent and is limited by conditions of approval. It involves the ‘occasional’ service of food, catered or from a food cart, at an existing, permitted brewery located in an historic barn. Eighteen 72-hour events are allowed, that are further constrained by the hours of event operations during the proscribed 72-hour period. The permit can be terminated after four years, or renewed at that time for another four years. Given the already mixed nature of the uses in the area, between urban and rural, it is reasonable for the county to conclude that allowing the service of food in this way, within or adjacent to an existing structure where brewing and tasting beer are allowed, will have no direct, material, substantial, economic, causal effect on any use in the area, and will have no impact whatsoever on the economic stability of the area.

The county predicts that no uses (zero acres) in the study area will potentially change if food is served in a barn and seating area adjacent to a barn, up to 18 times per year, at the site. Benjamin Road is suitable for use by both farm equipment and by residents and brewery patrons, and there is no other conceivable interference that the proposed events will cause to farm or residential uses in the area. Some residents argued that their residential uses are negatively impacted by the brewery itself, but no nuisance complaints have been received by the brewery owner or by the county. In any case, the existence of the brewery or its use for occasional food service does not appear likely to make the residences in the area unsuitable for residential use. “Material” means that some significant level of alteration will occur. It is perhaps conceivable that the success of Wolves and People will encourage the creation of other “farmhouse” breweries, somewhere in the county, serving food under an “event” permit, but creation of the brewery in the first place would require an application for a conditional use permit, and the consideration of potentially conflicting uses.

The county is also considering the cumulative effect of historical, current and projected nonfarm development in the area to conclude that issuance of the requested event permit will not materially alter the stability of the land use pattern in the area. If there is any “trend” taking place in the area, it is toward the development of more intensive urban uses. Issuance of the event permit in this case will have a negligible impact, especially in comparison to the changes anticipated development within the city will likely bring.

In conclusion: the impacts of issuing the requested permit are negligible with regard to the stability of the land use pattern in the area, over both the short and long term. There is no immediate, significant short-term threat to the stability of the area, and no long-term threat, considering development trends and possible cumulative impacts. The standard is met.

(h) Must comply with any conditions established for:

(i). The types of events or activities that are authorized during each calendar year, including the number and duration of events and activities, the anticipated daily attendance and the hours of operation;

(ii). The location of existing structures and the location of proposed temporary structures to be used in connection with the events or activities;

(iii). The location of access and egress and parking facilities to be used in connection with the events or activities;

(iv). Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v). Sanitation and solid waste.

Subsection (h) does not contain standards for approval of an event permit. The applicant has indicated a willingness and ability to comply with all established conditions of approval, including those referenced in subsection (h).

c. Shall occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size;

The minimum lot size applicable to the subject property is 20 acres, and the subject parcel is 21.53 acres. The application meets this requirement.

d. Permits approved under this subsection expire one year from the date of approval;

e. Such permits may be renewed at four year intervals subject to:

(i). An application for renewal;

(ii). Public notice and public comment as part of the review process;
and

(iii). Demonstration of compliance with conditions of approval and the standards of this subsection.

Yamhill County Ordinance Subsection 1013.01(A)(4)(e)(iii) states in part that the applicant needs to demonstrate compliance with the conditions of approval. The Conditions found in Board Order 17-74 are as follows with the applicant's justification of compliance with each condition:

1. *The events shall not, individually, exceed 72 consecutive hours and shall not exceed the hours of operation as noted in the application, which are: Friday 4-9 p.m., Saturday 2-10 p.m. and Sunday 12-5 p.m.*

To show he did not exceed the 72-hour limit, the applicant responded with a list of the events as follows:

Felicitation, June 3/4. Saturday noon-8pm, Sunday noon-5pm. Newberg chef.
Bearded Buddies. July 15/16, noon-8pm, Sunday noon-5pm. McMinnville chefs.
Pastrami Zombie - July 28/29. Friday 4-9pm. Saturday noon-8pm. PDX chef.
Taqueria Weekend - August 11/12. Saturday noon-8pm, Sunday noon-5pm. Dayton chef.
Labor Day Weekend - R&R Culinaire. Friday Sep.1, Saturday Sep. 2. 4-8pm each day.
McMinnville chefs.
Bottle Release Weekend & Park Kitchen Pop Up - September 23/24. Saturday noon-8pm.
Sunday noon-5pm. Portland chefs.
Thanksgiving Oyster Social. November 25th, 1-5pm. Portland chefs.

The applicant noted that some of these events started prior to the approved times in order to end earlier. The applicant provided the following explanation:

“As for the start times, as our submitted materials show, on several event days we did indeed open at hours such as noon rather than 2pm in order to have things wrapped up by 8 instead of 10pm — but this was in order to be more neighborly and have traffic concluded well before any adults would be asleep in the area.

By closing at 8pm most nights we ensure our guests are exiting at decent hours and heading for bed or food off-site, which we certainly encourage out of concern for the health and safety of our guests.”

I understand now we may have erred in assuming we could begin events at another time than what was outlined in the permit. Early last summer, independently I reached out to OLCC about adding tasting room hours during the week, who confirmed we could adjust operating hours as needed per the rules of our liquor license, but we perhaps incorrectly assumed that per the rules of our agritourism permit that we could adjust hours on a given day due to weather, chefs’ schedules, and our own small-business challenges.

The duration of any one day of events was never more than 8 hours, and our intention at opening earlier on any day was in order to be closed earlier and spare neighbors (and ourselves, as my wife and I live here) any intrusion of added noise and headlights, etc. We have never received noise complaints at the brewery.

Had we known that start time was such a sensitive issue we surely would have made every effort to open at 2pm and remain open until 10pm, but I strongly believe this may have resulted in complaints.”

As noted above, the applicant did start their events earlier than the permitted hours of operation. However, this adjustment was done to address the concerns of the neighbors. One of the complaints from neighbors was the headlights from cars exiting the facility. The applicant adjusting the end time to 8:00 PM would have assisted with reducing this conflict.

The county concludes that, in adjusting his hours to open and close at earlier times, the applicant was, in part, making a good faith effort to address concerns earlier raised by neighbors. His decision to do so did not cause any identified harm to anyone and, is an exceedingly minor violation of the Conditions of Approval. The Planning Commission agreed with this assessment in amending the previous condition to allow greater flexibility and reflect an earlier closing time in its 7-0 approval of the application.

2. *The maximum number of persons that may be on the site during an event shall not exceed 250.*

To demonstrate compliance with this condition the applicant stated: “We did not have 250 persons at any one time at our events. In the photo supplied in an earlier email, taken at the peak hour of around 4 pm, it is instantly apparent to see attendance was not even close. We sold perhaps 160 tickets out of 220 available for Saturday’s “Felicitation” event on June, 3, 2016. If needed, we can supply some sort of printout of ticket sales for that event.” There was no evidence submitted in the proceedings before the county indicating that the maximum number of persons during an event exceeded 250.

3. *The maximum number of vehicles at any one time shall not exceed 125 vehicles and an area to provide up to 125 parking spaces shall be maintained during the events. No on-street parking is allowed.*

Evidence in the record supports a conclusion that there is room for 125 cars to be parked on the property, and that there have never been close to 125 cars parked on the property during any of the events held on the property.

4. *The artificial amplification of voice or music is allowed for one yearly event only between the hours of 8 a.m. to 10 p.m.*

In response to this condition the applicant stated, “We did not have live music with outdoor amplification for these events.” The applicant substantially complied with this condition.

5. *The applicant shall obtain approval from the Oregon Liquor Control Commission (OLCC) for the service of alcohol.*

To demonstrate compliance with this condition the applicant submitted an “Authority to Operate” and a “License Renewal Application” from the OLCC. As noted elsewhere in these findings, and contrary to the claims of some opponents, there is evidence to support

a conclusion that the applicant complied fully with this condition, and there is no evidence to support the claims by opponents regarding OLCC requirements for service of alcohol at the brewery.

6. *One food cart is allowed for the 18 approved events per calendar year. Any food service provided shall be prepared from an approved source that is licensed and inspected by the Public Health Department.*

To demonstrate compliance with this condition, the applicant submitted the Facebook invites to show that there was only one food-cart per event. No evidence was submitted indicating that more than one food cart was ever present during an event.

7. *During events in which the applicant anticipates that more than 50 persons will be on site at the same time, the applicant shall provide four portable toilets with a hand-wash station.*

To demonstrate compliance with this condition the applicant stated, “There was only one event that this condition would apply to, Felicitation, June 3-4, 2016. For this event, we hired the additional required four portable toilets and sink. With our smaller crowds, and our own bathroom being operational, these were more than adequate, leaving barely used. Attached is a copy of the related bill.” Evidence presented to the county indicated that two bathrooms have been established in the brewery under county permit, and a septic system capable of accommodating up to five employees and 50 tasters. The applicant met this condition; the Planning Commission amended the condition for the purpose of the four-year renewal to reflect the completion of the the bathrooms in the brewery; and the Board accepted and imposed the revised condition.

8. *This approval is personal to the applicant and is not transferred by, or transferrable with conveyance of the tract.*

Neither the property nor the application has been transferred to another party.

9. *This approval shall expire one year from the date of this letter but may be renewed for a four-year period subject to a renewal application and compliance with the above conditions of approval and the standards of Section 1013 of the YCZO.*

This application is a result of the above condition. The applicant complied with the Conditions of Approval, as required by this standard.

OTHER ISSUES:

Brewery and Tasting Room: As noted elsewhere in these findings, the applicant operates a previously-approved brewery and tasting room on the property that was approved in 2014 through Docket C-10-14. The approval or denial of this event renewal application does not affect this previous approval for a brewery and tasting room. Related to this previous

approval, the June 28, 2018, request for hearing stated: “In addition, the applicant’s operation of Wolves and People has utterly failed to conform to the brewery and tasting room operation that it applied for and received approval for in Docket C-10-14. The county should not consider additional land use approvals prior to ensuring compliance.”

On July 25, 2018, Friends of Yamhill County followed up with a complaint that the Wolves and People brewery was operating a tavern without land use approval. The request points to Wolves and People serving 12 oz. draft beers.

Friends of Yamhill County is incorrect in its assertions. First, there is no basis under the county’s zoning ordinance for preventing consideration of a land use application due to claims of code violations. In fact, the county has sometimes encouraged a land use action in order for the use to come into compliance. Second, condition number two of Docket C-10-14 states:

No on-site tasting activities may be conducted prior to the construction of the tasting room. The tasting room may be open for daily tastings for the primary purpose of promoting and selling the beer made from the products harvested on-site and in the local area. (underline added)

Nothing in the above condition limits the servings to 3 oz. tastes as asserted by Friends of Yamhill County. Lastly, the volume of alcohol served at the brewery is regulated by the OLCC, not by Yamhill County. Friends of Yamhill County have apparently misread, or misinterpreted, state statutes and rules, in making its claims of legal violations by the applicant.

In addition, a letter dated January 16, 2018 from Tim Fitchett, directed at the request made by the applicant and the neighboring winery, to the Newberg tourism board, regarding the “Vines to Steins Trail,” appeared to mix those uses allowed through the brewery approval, and those allowed through the agri-tourism event approval. For example, objection was made that the brewery was open more than “. . . the 18 weekends that they are allowed.” The conditional use approval allows the brewery to be open on the weekends. What it does not allow is for them to have a food cart. The claims of Friends of Yamhill County in this matter have no merit.

CONDITIONS OF APPROVAL:

Based upon the above findings and conclusions, the request by Christian DeBenedetti for permission to have a food cart or caterer present for up to eighteen beer tasting events per calendar year as “agri-tourism” or “commercial” events at his existing brewery on Tax Lot 3215-500, is approved with the following conditions:

1. The events shall not, individually, exceed 72 consecutive hours and shall not exceed five hours on Friday, eight hours on Saturday and five hours on Sunday. All events shall end by 9:00 p.m. each day.

2. The maximum attendance for each event shall not exceed 250 people.
3. The maximum number of vehicles at any one time shall not exceed 125 vehicles and an area to provide up to 125 parking spaces shall be maintained during the events. No on-street parking is allowed.
4. The artificial amplification of voice or music is allowed for one yearly event only between the hours of noon to 8 p.m.
5. The applicant shall obtain approval from the Oregon Liquor Control Commission (OLCC) for the service of alcohol.
6. One food cart is allowed for the 18 approved events per calendar year. Any food service provided shall be prepared from an approved source that is licensed and inspected by the Public Health Department.
7. During events that exceed 50 attendees, the applicant shall provide four portable toilets, with a hand-wash station, unless the County Sanitarian approves fewer toilets based on adequate permanent facilities.
8. This approval is personal to the applicant and is not transferred by, or transferrable with, conveyance of the tract.
9. This approval shall expire four years from the date of this approval but may be renewed for a four year period subject to a renewal application and compliance with the above conditions of approval and the standards of Section 1013 of the YCZO.