



February 6, 2023

LCC 921.874(A)(2) Additional analysis

Background: The City of Millersburg ("City") is requesting Linn County's ("County") concurrence to a revision of the City's Urban Growth Boundary (UGB) using OAR 660-024-0070, which permits an exchange or swap of two different properties. The City processed this as case number DC 22-01 and adopted the proposal. Consistent with state and local requirements, an application was then made to the County as application PLN-2022-00807. City and County staff fully analyzed all applicable criteria and recommend approval of the proposal. During the Board of Commissioners' hearing on January 24, 2023, the Board of Commissioners requested additional information regarding criteria in Linn County Code Section 921.874(A)(2). The criteria reads:

LCC 921.874(A)(2): The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.

The additional analysis in this report will be provided in two parts.

1. Part one will walk through the existing City Development Code requirements to show how they would protect the neighboring property from any significantly adverse impacts. The report reviews both Site Development Review criteria and Conditional Use Permit criteria Chapters 5.04.050 and 5.05.060 respectively in order to show compatibility with different levels of City reviews.
2. Part two review other examples of existing circumstances in Linn County where large-scale industrial facilities exist in and around Exclusive Farm Use (EFU) zoned properties with no significant adverse impacts on the farming communities they neighbor.

Executive Summary: Together, the two parts of the analysis show that industrial and agricultural uses are compatible and do not disrupt overall land use patterns. First, by reviewing the existing City criteria requirements, which include specific development standards that would apply to the property proposed to be brought into the City's UGB, the analysis shows that any negative impacts can be addressed through the design of the project or through conditions of approval added to the project which mitigate impacts. The analysis walks through each City criterion to demonstrate that impacts at the actual project site can be addressed with existing City and state requirements. Second, the analysis of other existing Linn County locations where industrial uses and agricultural uses have operated side by side for decades shows that the industrial uses did not alter the land use patterns surrounding these factories and industrial uses. Together with the existing analysis already provided in the City and County Staff Reports, it is very clear that County criteria LCC 921.874(A)(2) is met.

PART ONE- CRITERION REQUIREMENTS AND STANDARDS

CITY OF MILLERSBURG DEVELOPMENT CODE

Permitted, special, and conditional uses under the General Industrial (GI) zone are identified in Millersburg Development Code ("MDC" or "Code") sections 2.10.020-040, copies of which are attached hereto and incorporated herein by this reference. Generally, manufacturing, trade and distribution facilities, utilities and similar uses are allowed as permitted uses; excluding those uses involving the storage of explosives, or EPCRA Section 302 – Extremely Hazardous Substances along with uses or other uses that require conditional use approval under MDC section 2.08.040.

All uses are subject to the Site Development Review under MDC 5.05.060. MDC 5.05.010(1) identifies the four purposes of the Site Development Review criteria and process. They are:

- (a) Guide future growth and development in accordance with the Comprehensive Plan and other related regulations;**
- (b) Provide an efficient process and framework to review development proposals;**
- (c) Ensure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment; and**
- (d) Resolve potential conflicts that may arise between proposed developments and adjacent uses.**

5.05.060 Site Development Review Decision Criteria

The review of the Site Plan shall be based upon the following criteria:

- (1) The proposed use is allowed in the zone and complies with the underlying zone development standards.**

ANALYSIS: The zoning for the site would be General Industrial (GI). Specific uses are listed in the Code as permitted with Site Development Review; others require a Conditional Use Permit. The permitted uses (with Site Development Review) are intended to allow business that help the economy and are adequately distanced from residential uses. Any use not listed is not permitted. Conditional uses are those that may require additional mitigation to address compatibility with neighbors. All the uses must follow all standards listed in the entire Development Code.

Additionally, every zone includes development standards specific to that zone. The development standards for the GI zone include all dimensional standards listed in Table 9.

Table 9 GI Zone Dimensional Standards	
GI Zone Dimensional Standards	
Minimum Lot Area	
All Development	Sufficient to meet setbacks and development requirements
Minimum Setbacks	
All Yards	0 feet
Yards Adjacent to RM, RL, and RU Zones	10 feet + 5 feet per story

Yards Adjacent to Conser Road	30 feet + 5 feet per story
Yards Adjacent to Old Salem Road	10 feet south of the Murder Creek undercrossing. North of the Murder Creek undercrossing, 10 feet on the west side and 20 feet on the east side incorporating trail as identified in the most currently adopted Transportation System Plan
Maximum Structure Height	
Principal and Accessory building	No limit
Maximum Lot Coverage	100%

Section 2.10.060 includes additional standards that include parking requirements, sign standards, details for yards and lots, landscaping requirements and screening for residential areas.

The subject site is located along Conser Road and would be required to include a 30-foot setback, including an additional 5 feet per story beyond the first story. This will help address light and shade impacts that could possibly impact farmland across the street from the site. This setback would have to be fully landscaped.

The lot coverage is 100%. That means that based on this one requirement, the entire property would be developed with buildings; however, other requirements would limit the size of the development. These include:

- Parking, as discussed later.
- Storm water or water quality basins. These could also be used to further buffer neighboring properties to the west and north where the neighboring farms are located.
- The required 30-foot setback also limits the development envelope.
- There are some minor amounts of FEMA flood plain along the river that would also limit the development envelope.

(2) The proposed use will not create negative impacts on the surrounding area resulting from traffic flow, noise, dust, glare, odor, potential incompatible adjacent uses such as parking lots, or other impacts identified in the public hearing process.

ANALYSIS: This criterion will require any incoming development to assure that possible impacts to the neighbors are met. The surrounding properties are in the following uses:

Tax Lot	Direction	Zone / General Use
10S03W20 00400, 10S03W20 00500, & 10S03W20 00300	North	EFU Grass seed – hay forage
10S03W20 00303, 10S03W20 00300	North East	PF– Fire District Fire Station and RU vacant land
10S03W20 00600, & 10S03W28 00108	East	GI Automobile recycling and power transfer station
10S03W29 00207	East	GI – City owed land intended for industrial development

10S03W29 00100	South East	GI – City owed land intended for industrial development
10S03W29 00201	South	Proposed EFU
10S03W19 01005	West	EFU
10S03W19D 00100	Northwest	EFU / Grass seed, hay forage, acreage residential. Nearest residence is approximately 460 feet from northwest corner of proposed GI land.

This criterion even lists several subcategories that must comply, though the last one opens the door to any other possible impacts. Any new project will require a public hearing, so even if staff does not identify a specific issue, the neighbors will have an opportunity to address any reasonable impacts at the hearing. This criterion would allow staff and the Planning Commission to add conditions of approval to mitigate any impacts that the Commission feels would not meet this criterion requirement.

Any industrial project on the property along Conser Road will increase traffic on Conser Road, though the City is constructing a new street designed to keep non-residential traffic off of NE Conser Road east of NE Woods Road. The new street is currently called NE Transition Parkway. This new street will be designed to accommodate the traffic from all farming and industrial development west of the railroad tracks. Additionally, any new project will be required to complete a traffic analysis that will analyze and mitigate impacts.

A new industrial project will typically produce noise, but no more than some agricultural operations produce, such as agricultural processing and distribution facilities. Noise alone should not have negative impacts on crops. The nearest residence is more than 450 feet from the northwest corner of the subject property. Given the necessary setbacks from the road and surrounding properties, it is likely that any noise that might create a significant impact can be mitigated using the staff review and public hearing process. This criterion requires that the new development address the noise levels so they are appropriate for the surrounding area, though it should be noted that some agricultural activities generate significant amounts of noise, such as the use of combines and other mobile farm equipment, or agricultural processing and distribution facilities and the trucks that frequent them. Similarly, farm uses are exempt from state and local noise ordinances; however, industrial uses are not so exempt from the City's noise ordinance. MDC 9.20.50(4). The City will be obligated to ensure noise compatibility between industrial uses and residential uses. Farm uses are generally less sensitive to noise impacts, and therefore should be adequately mitigated under the City's Code.

Lighting and glare is addressed on a case-by-case basis, but in no event shall light be permitted to leave the property, as required by the standards of the Code. Any impacts to the crops or livestock can be addressed on a case-by-case basis upon review, see section 3.03.080. This criterion allows the Planning Commission to add mitigation if needed in order to assure compliance.

(3) The City may impose conditions of approval intended to mitigate potential impacts including, but not limited to:

a. Provisions for public utilities, including drainage and erosion control needs;

ANALYSIS: This series of criteria requires the applicant to comply with City standards from specific sections of the Code. If these standards are not met, the application would not satisfy the criteria and the application would be denied. The City standards are designed, in part, to assure the project is a good neighbor. For subsection a, Code sections 3.05-Utility Lines and Facilities and 3.04-Storm Drainage apply. Adhering to the standard required basins or drainage facilities will assure that the post-construction conditions match the pre-development drainage conditions, meaning that any drainage patterns that exist today should remain largely the same. Typically, no additional runoff would affect neighboring properties. In this way, development on the property along Conser Road will not have negative drainage impacts on neighbors. The Code assures that.

b. Parking, traffic safety, and connectivity of internal circulation to existing and proposed streets, bikeways, and pedestrian facilities.

ANALYSIS: A specific number of parking spaces, as listed in Code section 3.03, is required for development on the property along Conser Road. This helps assure that no one will need to park in the street on Conser Road, or on any surrounding property. Parking will also likely act as a buffer between the buildings and the neighboring farmland.

Almost any project proposing to build on the property along Conser Road would need to complete a traffic study, consistent with the requirements of Code section 3.02.120 Traffic Impact Analysis. Generally a TIA is required if a use proposes more than 300 average daily trips in passenger vehicles, more than 10 trucks weighing more than 20,000 pounds, or an increase in traffic of 20% or more. Any proposed mitigation needed to assure traffic levels met the requirements of the Code would be added as conditions of approval. This requirement will assure that neighbors will not have to battle with excessive traffic from the new project. Code section 3.02 includes all standards for internal pathways, and bike requirements.

c. Provision for adequate noise and/or visual buffering from non-compatible uses including using site and landscaping design to provide needed buffering; and

ANALYSIS: This criterion adds a specific requirement for the applicant to assure that noise and visual buffering is addressed between non-compatible uses. Should the applicant not address these needs to the satisfaction of the Planning Commission, the Commission could add additional requirements to assure noise and visual aspects are fully addressed. Again, this is determined on a case-by-case basis, but the requirement applies to any development that could occur on the property along Conser Road. Yards (areas within setbacks) are regulated by Code section 3.08, and landscaping is addressed in Code section 3.09. Parking lots also require landscaping and landscape buffers from property lines. Planter bays with trees are required for

every 12 spaces, and at least half of the parking lot area is required to provide shade cover. The idea is that the parking areas will be green and blend well with neighboring uses.

It should also be noted that any office buildings would need to comply with the Commercial Design Standards from Code section 3.26. Commercial Design Standards are intended to create an attractive vista, enhancing the ability to attract business investment and livability. Requirements include specific façade and window treatments and pedestrian scale design elements like walkway coverings and covered entry areas.

d. Protections from any potential hazards.

ANALYSIS: Hazards would include FEMA flood plains, landslide areas, fault lines and other such hazards. These are addressed in the Code section 2.12-Floodplain Overlay and 2.14-Willamette Greenway. The site features a small amount of FEMA flood plain in the southwest corner. This area would typically not include any development. There are no other hazards anticipated on or near the property. No additional protections are needed.

This section would also mitigate any hazards that the development/manufacturing business would produce or use during the production process. This criterion would allow the City to add conditions of approval that would assure there is no impact to neighboring properties.

As a whole, the site plan review criteria provide a comprehensive means of addressing impacts on surrounding properties. The adjacent farm properties are part of the City's review. There are farm uses that are particularly sensitive to impacts associated with traffic, noise, odor, light or other impacts that will be reviewed and reasonably mitigated under site plan review.

5.04.050 Conditional Use Decision Criteria

A conditional use shall be approved if the applicant provides supporting evidence that all the requirements of this Code relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- (1) The use is listed as a conditional use in the underlying zone and complies with the development requirements of the underlying zone.**

ANALYSIS: See the discussion above in the analysis for 5.04.050(1).

- (2) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.**

ANALYSIS: As discussed in the staff reports, the site is currently farmland but it is well suited for industrial development because it is flat and located near river access, railroad tracks, street access, has close proximity to large scale utilities needed by industry, is located near other industrial uses, and it is not adjacent to residential uses.

The shape of the site is unique, but the property is large enough to work within the confines of the unique shape for a new industrial development.

Water and sewer both exist on the east side of the railroad tracks and need to be extended to the west side. The extension of these utilities is already underway based on the recent approval of an industrial fertilizer storage and distribution project located to the south of the 160 acres along Conser Road, west of the existing rail road tracks. These will all take place on the east side of the property and will have no impact on the farmland located to the north or west of the site.

Access to the site is currently available from Conser Road and a proposed new road that will soon be under construction. This new road will run north-south along the eastern side of the 160 acres to provide access to the newly approved fertilizer storage and distribution facility located south of the property along Conser Road. Any new development on the site would be limited in how many access points they could put on any road, including Conser Road, due to driveway spacing requirements from Code section 3.02.040.

(3) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services, existing or planned for the area affected by the use.

ANALYSIS: This criterion requires the site be serviceable with roads and utilities. This allows the City to regulate new development only to parcels that have the ability to access such services, meaning the site has good street access and that utilities can be provided to the site. As discussed previously, the property along Conser Road has street access along one existing and one planned road. Utilities are available to the site. Once installed, the future industrial use of the utilities will have no possible impact to the farmland west and north of the site.

(4) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying zone.

ANALYSIS: This is a key criterion when considering possible impacts to the neighboring farmland. Because this is a criterion, the City can require any mitigation needed to assure compatibility. As stated in the staff reports, when a project is proposed, this criterion will assure that mitigation is used to limit impacts. For example, if the building is too high and casts shade on the crops, the City can require the building to use setbacks or require the building levels to diminish as they get taller. Any cooling stacks can be required to be placed to the south or east of the structure. Using another example, the project can require trucks to use the east or south side so emissions from vehicles do not impact crops. While the standards have direct requirements, this criterion allows the City to employ requirements that may be above and beyond those listed as requirements in our Code if they are needed to assure this criteria is met. This criterion alone commands compatibility.

It should be noted that the criterion does not require that there be no impacts whatsoever; rather, it includes the word 'substantially' so there is a level of reasonability

in determining impacts. This standard is consistent with the County's standard under LCC 921.874(A)(2).

PART TWO - COMPATIBILITY WITH SURROUNDING EFU LANDS

Some individuals testifying in opposition to the proposal have suggested that developing the proposed property with industrial use instead of the property to the south via the UGB exchange will not be compatible with the surrounding farm uses. However, opponents have not identified any sensitive farm uses or anticipated conflicts with any specificity. As shown above, the City's site plan review criteria and conditional use criteria, along with state and federal regulations, can ensure the future uses are not significantly in conflict.

As further evidence that farm uses and industrial uses are not inherently in conflict, City staff has identified additional examples of industrial operations surrounded by EFU zoned property with active farming operations within Linn County. These include Cascade Pulp, Fort James Paper, Selmet/CPI, as well as approved farm-related, industrial uses such as Stahlbush Island Farms Canning and Freezing operations, which are all immediately adjacent to and surrounded by EFU lands. Many of these have existed for years.

Research done by City staff regarding any issues of compatibility or negative impacts as a result of these operations on surrounding EFU property has found no issues and/or concerns regarding negative impacts to the surrounding EFU lands and their use.

In fact, a request for the expansion of Selmet (a titanium casting facility) in 2014, included a request from the County to rezone EFU land identified in the County's Comprehensive Plan to Industrial Zoned lands. The staff report for the zone change request references that neighboring farmers were supportive of the expansion request and change from EFU to Industrial Zoned land. The neighboring farmers further stated they had no previous issues or concerns regarding compatibility of uses. The report states:

"The Selmet Plant was built in 1968 and has operated continuously in this location since then. The expansion contemplated by this consolidated application is possible because of the partnership that applicant built with neighbors to secure land subject to these applications. All users abutting Selmet's plant on Tax Lot 502 have signed this application in support of the proposed expansion. As with Selmet's existing facility, all metal manufacturing processes will occur indoors and away from potential impacts on neighboring uses. Applicant's facility has caused no significant negative impact on neighbors. No known complaints regarding noise, smell, lights, or other undesired behavior are in the record. By expanding on its existing site, which abuts Interstate 5, there will be no negative impact on the overall land use development pattern in the area." (page 21 and numerous other locations throughout the application, referenced in Linn County's staff report dated October 29, 2014 for BC14-0004).

The type of operations associated with titanium casting operations represents the potential for offsite risks and chemical hazards that far exceed the risk and hazards presented by a typical use that would be permitted on the 160 acres in the GI zone. In the case of Selmet, it is clear that any concerns with the casting operations have been mitigated by zoning requirements, building and fire code, and DEQ requirements.

City staff also reviewed the types of chemicals used by current industrial facilities within the County which are surrounded by EFU lands, via Oregon's Community Right-to-Know information for industrial facilities, to see how these industries may compare with operations that may occur on the property in question.

As a way of demonstrating a typical company that may build out on the property, this analysis uses, as an example, a company that has already expressed interest in the site. This company is planning to hold an open house for the community on February 16 to introduce themselves to the community. Using this company as an example, the company is of no greater risk, and likely represents significantly lower quantities of risk, than the chemicals currently in use by industries abutting EFU lands within Linn County today.

The City land use requirements meet or exceed County development requirements. Implementing City land use requirements, building and fire code requirements, and DEQ requirements will ensure equal or higher levels of environmental protections as exists in Linn County developments currently surrounded by EFU lands.

Industrial uses can harmoniously co-exist next to EFU zoned farmland. The County's standard of review is not whether there will be the complete absence of impacts, but whether there will be significant impacts. The evidence in the record supports the conclusion that the City's development code will ensure future uses will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.