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BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

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IN THE MATTER OF THE APPEALS)
OF CONDITIONAL USE PERMIT NO.)
30-82 FOR E. A. BIGBY AND LINDA) FINDINGS OF FACT AND ORDER
RAJNUS, APPLICANTS)

BACKGROUND

This is an appeal from a decision of the Hearings Officer conditionally allowing a personal use airport in the AU-5 (Agricultural Use) zone. E. A. Bigby and Linda Rajnus applied for a Conditional Use Permit for a personal use airport together with certain commercial uses as provided by a waiver from the Oregon Aeronautics Division (See Klamath County Exhibit "E"). The commercial uses were to include flight instruction, aircraft sales, rentals and maintenance, and parking for up to twenty (20) airplanes. The airport is on property leased from George and Kathleen Rajnus.

The Klamath County Hearings Officer reviewed the matter at public hearings held on July 1, August 5, August 18, August 20, and September 2, 1982. After accepting the testimony and exhibits offered by proponents and opponents of the request, the matter was taken under advisement and an order was signed on September 14, 1982. The order denied the proposed commercial uses, limiting approval to a personal use airstrip only.

An appeal of this decision was filed by the applicants and a cross-appeal by William Kennedy, an opponent. The Klamath County Board of Commissioners reviewed the appeals at public hearings held on November 22 and December 2, 1982. At the December 2, 1982, hearing, the Board of Commissioners discussed

1 and made a decision on each point raised by the two appeals as
2 follows:

3 APPEAL BY THE APPLICANTS

4 The first ground for appeal cited by the applicants
5 was that "the procedure used by the Hearings Officer was unfair
6 and procedurally invalid so as to require a rehearing." The
7 only specific procedural error pointed out by applicant's attor-
8 ney is found on Pages 17 through 21 of the transcript of the
9 August 19, 1982, hearing where William Ganong, attorney for
10 William Kennedy, was permitted to cross-examine Gerald Eames
11 of the Aeronautics Division. In reviewing the substance of that
12 discussion, the Board of Commissioners finds no prejudice or
13 harm to either side. The cross-examination occurred at an open
14 hearing, with both sides present and with adequate opportunity
15 for rebuttal.

16 Part "A" of applicant's appeal is hereby denied.

17 Applicant's second ground for appeal was that "the
18 decision, and its conditions, are not in accordance with the
19 substantiated, credible evidence presented at the hearings."
20 In discussing this point, it was the consensus of the Board of
21 Commissioners that substantial, and at times conflicting evidence,
22 was presented on some of the issues in this case. Not all of
23 this evidence figured in the Hearings Officer's final decision.
24 In particular, it is found that Dr. Koplin and James Leard are
25 well qualified to discuss the impacts on wildlife of an airport
26 of the type here proposed (See August 19, 1982, transcript,
27 Pages 8 through 11; August 5, 1982, transcript, pages 41 and 42,
28 Applicant's Exhibits 5 and 8, and Klamath County Exhibit "G").

1 Based on the evidence cited, adverse effects on wildlife may
2 be discounted. As approved, this Conditional Use Permit calls
3 for a review of the airport at the end of one year. Any docu-
4 mented evidence of injury to stock, wildlife or people could
5 lead to the modification or revocation of the permit.

6 It is found by the Board of Commissioners that a
7 central issue in this proceeding is the meaning of "personal use"
8 airport" as that term is used in the Klamath County Land Develop-
9 ment Code and in ORS 215.213(2)(g). It is the belief of the
10 Board that the law and County Code permit only a private, non-
11 commercial airport and that the waiver referred to in the law and
12 Code refers only to activities that are non-commercial in nature.
13 Allowing some of the uses requested by the applicant would be
14 a conversion of a personal use airport into a public airport.
15 Development of such commercial uses would be more appropriately
16 done with an application for a zone change.

17 Reviewing the specific conditions imposed by the
18 Hearings Officer, the Board of Commissioners finds that some of
19 them are unnecessarily restrictive. These conditions may be
20 modified or eliminated while still keeping the activities at the
21 airport consistent with the intent of ORS 215.213(2)(g) and the
22 Klamath County Land Development Code and assuring compatibility
23 with surrounding agricultural uses. In view of the above, the
24 following changes are made in the Hearings Officer's order of
25 September 14, 1982:

26 Condition "d" (Page 7) - This condition restricts the
27 number of flights to 300 per year, requires the applicant to
28 keep a record of each take-off and landing, and requires

1 the applicant to submit an annual report to the Planning
2 Department. In light of the other restrictions and limitations
3 imposed by this permit, the Board of Commissioners finds that to
4 make the owner keep such a log is unnecessary paperwork. If the
5 number of flights becomes a nuisance or hazard, recourse is
6 available through the Conditional Use Permit process. Condition
7 "d" is hereby stricken.

8 Condition "e" (Page 7) - This condition prohibits
9 maintenance on any airplane other than those of the owner of
10 the land. It is the opinion of the Board of Commissioners that
11 if aircraft are permitted at the site, maintenance for those
12 aircraft should be allowed. ORS 215.213(2)(g) specifically
13 includes "associated hangar, maintenance, and service facilities."
14 Condition "e" is hereby stricken.

15 Condition "f" (Page 7) - This condition limits to
16 five (5) the number of aircraft which may be parked at the site
17 at any one time. The record contains substantial evidence from
18 area farmers as to the value of this airstrip to their operations
19 (transcript of August 5, 1982, testimony of Steve Simmons,
20 Pages 22, 23; of Carl Rajnus, Page 26; of George Rajnus, Page 55;
21 transcript of August 19, 1982, testimony of John Wells, Page 14;
22 of Larry Halousek, Page 14; of Mike Todd, Page 15; and of Gary
23 Orem, Page 15). As a service to agriculture, it appears that
24 a larger number of aircraft could be based at the site without
25 turning it into a commercial airport. Condition "f" is therefore
26 amended to read as follows:

27 "There shall be no aircraft parked at the site other
28 than those owned or controlled by the owner, except for aircraft
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1 emergencies, and except on an infrequent and occasional basis
2 by the owner's invited guests. In any case, there shall be no
3 more than 15 aircraft other than those of the owner parked at
4 the site at any one time except for aircraft emergencies."

5 Condition "h" (Page 7) - This condition prohibits flight
6 instruction. The Board of Commissioners finds that, for safety
7 reasons, some flight training and practice would be necessary
8 for the owners of aircraft based at this strip. Such occasional,
9 non-commercial instruction would not be inconsistent with the
10 personal use airport. Condition "h" is amended to read:

11 "There shall be no charge for flight instruction
12 at the site."

13 Condition "k" (Page 7) - This condition limits aircraft
14 using the site to those under 3,000 pounds gross weight. The
15 testimony of E. A. Bigby indicated that the heaviest plane based
16 at the strip has a gross weight of 3,200 pounds (transcript of
17 August 5, 1982, Page 13). The size of aircraft using this
18 facility is limited by the length of the runway which may not
19 be enlarged. The Board of Commissioners finds it reasonable to
20 raise the weight limit to be consistent with the actual use of
21 the property. Condition "k" is amended to read:

22 "The aircraft allowed to use this strip shall be
23 limited to single-engine aircraft, under 3,500 pounds gross
24 weight."

25 Having made the above changes, the Board of Commission-
26 ers also voted to delete the reference to aircraft maintenance
27 from Finding of Fact No.7 of the Hearings Officer's Order (Pages
28 7 and 8). This finding now reads:

1 The requested commercial uses for aircraft sales and
2 rentals, flight instruction, and parking for up to 20 planes
3 belonging to those other than the owner, have been denied, and
4 the above conditions have been imposed based on the following
5 Findings of Fact:

6 CROSS APPEAL OF WILLIAM KENNEDY

7 The cross appeal brings up eight specific grounds for
8 review which the Board of Commissioners considered one by one.

9 A. "The following Finding of Fact (Line 1, Page 5,
10 of this Order): 'Some of the soils occupied by the proposed
11 use are Class III, IV, and VI' does not meet the issues of
12 Statewide Goal No. 3 or the County Comprehensive Plan..."
13 Cross appellant correctly points out that Class II soils are
14 also found on the airport property (see Opposition's Exhibit 13)
15 and the finding of the Hearings Officer is hereby amended to
16 reflect this fact. The Board of Commissioners does not agree
17 that this land use is inconsistent with Goal No. 3 or the
18 County Plan. Personal use airports, as here approved, are
19 provided for in agricultural areas and nothing is being done
20 to change the agricultural nature of the area. The Board of
21 Commissioners agrees with the Hearings Officer in accepting the
22 testimony of the landowner, George Rajnus, with regard to the
23 productivity and agricultural use of this property prior to
24 development of the airport (transcript of August 5, 1982, Pages
25 15 through 17 and Pages 26 and 27).

26 B. Cross appellant contends that the Hearing Officer's
27 "Conclusions of Fact (page 4, line 10 of the order): 'the
28 location, site, design and operation characteristics of the
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1 proposed use is in conformance ... etc.' is not supported by the
2 basic evidence..." The Board finds, as stated under A, above,
3 that an airport of this type is within the scope of agricultural
4 zoning, that ORS 215.213 (2) gives the Board or its designate
5 (the Hearings Officer) the authority to approve this use, and
6 that as long as the conditions of approval are met, this use is
7 consistent with the Klamath County Comprehensive Plan.

8 C. Cross appellant contends that the impacts of noise
9 were not fully considered in the Hearings Officer's decision
10 (page 5, line 16 of the Order). The Board of Commissioners finds
11 that two additional exhibits in the record also indicate very
12 limited noise impacts from airports of this type (County Exhibit
13 F; applicant's exhibit 2 from C.U.P. 13-82). There was also
14 testimony from several area residents that noise from Juniper
15 Hills did not bother them or cause any problem for their farming
16 practices (transcript of August 5: Dean Wells, pg. 19; Don
17 Jesser, pg. 20; Richard Hawkins, pg. 47). The Board feels that
18 there is sufficient material in the record to justify the Hearing
19 Officer's conclusion.

20 D. Cross appellant challenges the Hearings Officer's
21 finding that the commercial uses requested by the applicant are
22 permitted in the AU-5 zone (page 4, line 2 of the Order). The
23 Board of Commissioners agrees that within the limits of the
24 County Code and ORS 215.213 (2) (g) such commercial uses are not
25 allowed in an agricultural zone. The Hearings Officer's Order
26 is hereby amended by striking the last sentence of this finding
27 (page 4, lines 7 - 9 of the Order).

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1 E. Cross appellant contends that the conclusion that
2 Statewide Goal 2 has been met is erroneous (page 4, line 24 of
3 the Order). Having reviewed the record, the Board finds that
4 the procedural requirements of the Land Development Code have
5 been followed. The Hearings Officer gave due consideration to
6 the potential impacts of this airport and conditioned his approval
7 accordingly. Upon review, the Board gave additional consideration
8 to the airport's compatibility with surrounding farms and its
9 compliance with State and County agricultural policies. The
10 Board believes that the decision, as modified, is consistent
11 with the Klamath County Land Development Code and Comprehensive
12 Plan.

13 F. Cross appellant contends that the conclusion that
14 Goal 5 has been met is not supported by the findings (page 5,
15 line 13 of the Order). The Goal 5 related findings in the order
16 only discuss wildlife and not the other aspects of Goal 5. The
17 Board's findings on wildlife impacts have been stated on pages
18 2 and 3 of this Order. A review of the record shows no testimony
19 pertaining to any open space, scenic, or historic areas that
20 could be affected by this airport. Likewise, there was no
21 testimony on mineral, energy or water resources. The airport
22 with the exception of its one building, is essentially an
23 open-space use. The Board finds that the occasional landing or
24 take-off of a small aircraft would have no appreciable effect on
25 open space.

26 G. Cross appellant requests that more specific record-
27 keeping requirements be added to condition D (page 7, lines 3 -
28 6) of the Hearings Officer's order. The Board has removed the
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1 Condition in question, making this a moot point.

2 H. Cross appellant points out that the order
3 authorizes the use of an area totaling 180 acres and does not
4 clearly define the location of the existing facilities. The
5 legal description in the order is the erroneous one provided in
6 the application and Planning Department Staff Report on this
7 matter. The error was pointed out and corrected at the August 5,
8 1982 hearing (transcript, pages 1 and 2). The property descrip-
9 tion found on page 12 of the Hearing Officer's Order is hereby
10 corrected to read:

11 A parcel of land generally located north of Bedfield
12 Road, about 1/3 mile west of Harpold Road, and more
13 particularly described as being a portion of Tax
14 Lot 3, located in the west 1/2 of Government Lots
11 and 14 in Section 1, Township 40, Range 11.

15 This correction reduces the encompassed land to 40 acres within
16 which the airport is located. Applicant's plot plan (applicant's
17 exhibit 1) shows more precisely where the facilities are and is
18 part of the record on this matter. The Board finds that condition
19 i, prohibiting expansion of the airport (page 7 of order),
20 together with the plot plan and corrected property description
adequately circumscribe the airport.

21 CONCLUSION

22 Having considered the record placed before it and
23 the arguments made at its hearings of November 22 and December
24 2, 1982, the Klamath County Board of Commissioners hereby adopts
25 the findings of fact and conclusions of law and conditions made
26 by the Hearings Officer in his order of September 14, 1982,
27 except as amended above.

DONE AND DATED THIS 30th DAY OF December 1982. 229

Hayd L. Kynne
Chairman

Alvin A. Payne
Commissioner

Neil Kuonen
Commissioner

APPROVED AS TO FORM:
Boivin & Boivin

By Robert D. Boivin

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record .

this 5 day of Jan A.D. 1983 at 3:57 o'clock P M., and
duly recorded in Vol. M83, of Deeds on Page 220.

No Fee

By Evlyn Biehn, County Clerk

COMMISSIONERS JOURNAL

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