

BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the Matter of a Request for)	No. 3-85
CONDITIONAL USE PERMIT)	
for)	FINDINGS OF FACT, CONCLUSIONS
	OF LAW AND DECISION
MICHAEL D. CUNNINGHAM and)	
LINDA L. CUNNINGHAM.)	

THIS MATTER came before the Assistant Hearings Officer, JAMES R. UERLINGS, on the 21st day of February, 1985, at 1:30 p.m. in the Klamath County Commissioners Hearing Room. The hearing was held pursuant to notice given in conformity with the Klamath County Development Code and related ordinances. The applicant, MICHAEL W. CUNNINGHAM, appeared in person and the Planning Department was represented by Jonathan Chudnoff.

The following exhibits were marked, entered and received into evidence and made a part of the record: Exhibits "A" through "F".

The Assistant Hearings Officer, after reviewing the evidence presented, makes the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT:

1. The applicants, MICHAEL W. CUNNINGHAM and LINDA L. CUNNINGHAM, are the owners of the subject property located at Tax Lot 400, located in the SE $\frac{1}{4}$ of Section 7, Township 39, Range 10, Klamath County, Oregon, generally

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1 located South of Booth Road, near its intersection with Vale
2 Road.

3 2. The applicants are the owners of a 3.47 acre
4 parcel, partitioned in 1983. At that time, the property
5 was in a residential zone, but a change in the Klamath
6 Falls Urban Growth Boundary left this area in an EFU-C zone.
7 The Cunninghams are now petitioning to be allowed a non-farm
8 homesite on this parcel. The property is isolated from
9 other farm land by drainage ditches on the North and West
10 and by the OC&E Railway to the South. The four owners of
11 the adjacent farm land have submitted letters stating that
12 they do not object to this proposal. These adjacent properties
13 are 12 to 29 acres in size and are used for irrigated pasture
14 and rural homesites.

15 3. The applicants intend to continue an agricultural
16 use of the property by continuing with grazing.

17 4. The Plan Designation for the property is agri-
18 cultural, the Zone Designation is EFU-C and Adjacent and
19 Surrounding Zoning is EFU-C.

20 5. The property consists of grass vegetation,
21 the topography is rolling and sloping up to a knoll at the
22 point on which the applicants intend to place their homesite.
23 General drainage runs in a southerly direction. The soil
24 class is III.

25 6. Access to the property is by private driveway
26 from Booth Road.

7. The general location upon which the applicants intend to place their homesite is not suitable for agricultural purposes as it is the top of a knoll which cannot be adequately used for agricultural purposes.

8. Public services consist of Klamath County School District (Henley), recreation is provided by urban area parks and school grounds, sewer is provided by septic tank and water by well. Utility districts serving the property are Pacific Power and Light and Pacific Northwest Bell. The fire district is Klamath County Fire District NO. 1.

KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

1. Klamath County Development Code Section 44.003 sets forth the criteria for consideration in the application of a conditional use permit:

A. That the use is conditionally permitted in the zone in which it is proposed.

B. That the location, size, design and operating characteristics of the proposed uses is in conformance with the Klamath County Comprehensive Plan.

C. That the location, size, design and operating characteristics of the proposed development will be compatible with, and will not adversely effect, the livability or appropriate development of abutting properties in the surrounding neighborhood. Consideration shall be given to the harmony in scale, bulk, and utilities; to harmful effects,

1 if any, upon desirable neighborhood character; to the generation
2 of traffic and the capacity of surrounding streets and to
3 other relevant impact of development.

4 2. Klamath County Development Code Section 51.017(D)
5 sets forth the criteria for a non-farm dwelling. It states
6 that single family dwellings not in conjunction with farm use
7 may be established subject to a Conditional Use Permit and
8 a finding that each such dwelling:

9 A. Is compatible with farm use as defined in
10 this Code and consistent with the agricultural land use policy
11 adopted by the legislative assembly in ORS 215.243;

12 B. Does not interfere seriously with accepted
13 farming practices on adjacent lands devoted to farm use;

14 C. Does not materially alter the stability
15 of the oversall land use pattern of the area;

16 D. Is situated upon generally unsuitable land
17 for the production of farm crops and livestock, considering
18 the terrain, adverse soil or land conditions, drainage and
19 flooding, vegetation, location and size of the tract; and,

20 E. Complies with such other conditions as the
21 Board of County Commissioners or its designate considers
22 necessary.

23 3. Klamath County Development Code Section 51.017
24 also states that the conditional use permit shall not be final
25 nor shall a building permit for a non-farm dwelling be issued
26 under this section until the applicant provides the Planning
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Department with evidence that the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use and that any additional tax or penalty imposed by the county assessor has been paid.

KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

1. The proposed use is conditionally permitted in the zone in which it is proposed.

2. The location, size, design and operating characteristics of the proposed use will be compatible with, and will not adversely effect, the livability and/or appropriate development of abutting properties in the surrounding neighborhood. In considering the location and operating characteristics of the proposed development, it appears that they will be compatible with, and will not have a significant adverse effect, on the appropriate development and use of abutting properties in the surrounding neighborhood.

3. The proposed single-family dwelling is compatible with the farm use as defined in this Code and consistent with agricultural land use policies adopted by the legislative assembly in ORS 215.243.

4. The proposed single-family dwelling does not interfere seriously with accepted farming practices on adjacent land devoted to farm use.

5. The single-family dwelling does not materially alter the stability of the overall land use pattern of the area.

6. The single-family dwelling is situated on generally unsuitable land for production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

STATE-WIDE PLANNING GOALS AND REVIEW CRITERIA:

Compliance with the State-Wide Planning Goals and review criteria was met by Klamath County on the subject property at the time of the acknowledgement of Klamath County's Comprehensive Plan.

CONCLUSIONS OF LAW AND DECISION:

1. This request for a conditional use permit on the subject property meets all applicable Klamath County Development Code criteria and policies governing such.

2. This request for a conditional use permit is consistent with, and complies with, all applicable State-wide Planning Goals and review criteria and the Klamath County Comprehensive Plan.

THEREFORE, IT IS HEREBY ORDERED that this request for a conditional use permit on the subject property is granted.

DATED this 5 day of March, 1985.


JAMES R. UERLINGS
Assistant Hearings Officer


Return: Commissioners Journal

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STATE OF OREGON: COUNTY OF KLAMATH:ss
I hereby certify that the within instrument was received and filed for record on the 6th day of March A.D., 19 85 at 11:37 o'clock A M, and duly recorded in Vol M85, of Deeds on page 3301.

EVELYN BIEHN, COUNTY CLERK

Fee: \$ None

by: , Deputy