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BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for)
Conditional Use Permit No. 40-85)
for Kleos Ministries)

Klamath County Planning

Findings of Fact and Order

A hearing was held on this matter on November 21, 1985, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad Aspell. The applicant was present. The Klamath County Planning Department was represented by Carl Shuck. The Hearings Reporter was Janet Libercajt.

Evidence was presented on behalf of the Department and on behalf of the applicant. There were adjacent property owners present.

The following exhibits were offered, received, and made a part of the record:

Klamath County Exhibit A, Staff Report

Klamath County Exhibit B, Assessor's Map

Klamath County Exhibit C, Letter from Crocker Bank

Klamath County Exhibit D, Site Plan

Klamath County Exhibit E, Kleos Children's Comm. Proposal

Klamath County Exhibit F, Letter from Dept. of Fish and Wildlife

Klamath County Exhibit G, Proposed Findings of Fact & Order

The hearing was then closed, and based upon the evidence submitted at the hearing, the Hearings Officer made the following Findings of Fact:

FINDINGS OF FACT:

The requested Conditional Use Permit is granted with conditions as based upon the following Findings of Fact:

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1 1. The subject property is the Southwest corner of Section
2 20, Township 35 South, Range 7 East W.M., Klamath County, Oregon
3 and is known for assessment purposes as Tax Lots 2600 and 4100.
4 The property is located 1 mile north of Day Shcool Road with its
5 northern boundary abutting the Williamson River. It is approx-
6 imately 25 miles north of Klamath Falls, 1 mile west of U.S.
7 Highway 97. The property is designated Agricultural (A) under
8 Klamath County's Comprehensive Plan and is zoned EFU-CG
9 (Exclusive Farm Use-Crop Land, Grazing). The property consists
10 of approximately 108 acres, is generally irregular in shape as
11 shown on the Assessor's Map, Exhibit "B". The property is
12 presently owned by Crocker Bank, see Exhibit "C", and while the
13 real property owners consent has not been attached to the
14 application, the submission is not jurisdictional as the com-
15 mitment letter of the Bank provides a conditional approval. The
16 property in question is known to the Hearings Officer and is
17 generally flat with topography ranging from 2 percent to 5
18 percent slopes. Drainage from the property is generally into
19 the Williamson River. The property has previously been used for
20 gravel extraction and contains an existing excavation of
21 approximately 20 acres and an additional 20 acres in which the
22 overburden has been removed. The Hearings Officer was presented
23 at the time of the hearing proposed Findings of Fact, Conclusions
24 of Law and Order, which the Hearings Officer specifically accepts
25 for testimonial purposes as Exhibit "G" and for purposes of
26 Findings of Fact accepts as testimony those statements detailing
27 the site and applicant's proposed uses and specifically, thanks
28 Mr. William Ganong, Esq. for his able input. In this regard,

1 the Hearings Officer finds that the quarry site and mineral
2 extraction areas cover approximately 40 acres of which the
3 excavation will be converted into a recreational lake and the
4 applicant will cover the overburden which the applicant will
5 reclaim and plant into pasture. The vegetation consists of
6 scattered Ponderosa and Jack Pine, the undergrowth being sage-
7 brush, bitterbrush and wild grasses. The Hearings Officer
8 appreciates the large photos introduced at the hearing, but not
9 marked as a part of this record due to their size and relative
10 cost to the applicant. The property adjoins an existing farm
11 land similarly designated Agricultural and zoned EFU-CG on its
12 east, southerly and a portion of its westerly boundaries
13 excluding therefrom a strip adjoining the Williamson River
14 designated Rural Residential (RR) in the Comprehensive Plan and
15 zoned R-1. The Hearings Officer finds that this area, commonly
16 known as River Bends Subdivision, and that directly across the
17 Williamson River to be a hodgepodge of recreational homes on
18 agricultural land.

19 2. The applicant seeks a Conditional Use Permit for
20 community education, recreation and religious assembly. In
21 particular, the development plan submitted, Exhibit "D", describes
22 10 residential buildings, a vocational shop and an educational
23 multi-purpose building described in Exhibit "D". The applicant's
24 intended use of the property is to provide a home and family
25 based environment for pre-delinquent, dependent, abandoned,
26 abused, and neglected children, between the ages of birth and 15,
27 and to prepare the children for normal adjustment to society.
28 In approving this application the Hearings Officer has been

1 swayed by and relies on the Kleos Children's Community Proposal
2 marked as Exhibit "E" and received in this Hearing and made a
3 part of and relied upon in issuing these Findings of Fact and
4 Conclusions of Law.

5 3. Access to the property is primarily off Day School Road
6 and the extension of River Drive which serves River Bend
7 Subdivision to the west and through an easement and right-of-way
8 which serves the subject property in the southwest and that of
9 W.W. Pollard. The Hearings Officer specifically finds from the
10 testimony and from reference to Exhibit "D" that access primary
11 will result from River Drive with secondary access, primarily
12 in case of weather or emergency private easement.

13 4. The property lies within the attendance area of the
14 Chiloquin School District, sewage disposal shall be by indi-
15 vidual septic systems of which the applicant represents that
16 percolation studies confirm that all structures to be located on
17 the premises qualify for septic tank approval and that water
18 shall be provided by individual wells. Utilities serving the
19 subject property include Pacific Power & Light Company (elec-
20 tricity) and Pacific Northwest Bell (telephone). The property
21 is located within the Chiloquin/Agency Lake Fire District.

22 5. The property has Class IV soils of Lobert Loam. These
23 soils are generally consistent for irrigated crops, woodland
24 sites, camping areas and homesites. A timbersite grading of V
25 or 50 to 85 cubic feet per acre per year has been established,
26 a timber site rating of below average yield.

27 6. This application is subject generally to Section 44.003
28 of the Klamath County Land Development Code, Review Criteria
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1 51.018 (C) (3)(4)(5), 51.018(D). In this regard the Hearings
2 Officer finds from extensive testimony and evidence adduced that
3 the applicant's proposed use generally falls within the defi-
4 nitions of Section 51.018 (C)(3)(4)(5) therefore meeting the
5 criteria of Section 44.003(A)(B). Of criteria 44.003 the
6 location, size and design generally meet all applicable criteria
7 of the Land Development Code and of Klamath County Comprehensive
8 Plan Goals as set forth hereafter. Particular as to the overall
9 development plan and specifically the ten residences intended
10 thereon, Section 51.018(D) provides the following five conditions
11 "1. is compatible with farm use as defined in this
12 Code and consistent with the agricultural land use
13 policy adopted by the legislative assembly in ORS
14 215.243,
15 2. does not interfere seriously with accepted
16 farming practices on adjacent lands devoted to farm
17 use,
18 3. does not materially alter the stability of the
19 overall land use pattern of the area,
20 4. is situated upon generally unsuitable land for
21 the production of farm crops and livestock, considering
22 the terrain, adverse soil or land conditions,
23 drainage and flooding, vegetation, location and size
24 of the tract, and
25 5. complies with such other conditions as the Board
26 of County Commissioners or its designate considers
27 necessary."
28 7. In this regard Exhibit "D" demonstrates that applicant's

1 intention of development of the subject property is:
2

3 A. To develop a small portion of the property as set
4 forth in Exhibit "D".

5 B. Reclaim unproductive acreage by establishment of
6 pasturage over 20 acres presently consisting of overburden
7 and establishment of a small recreational lake on the rock
8 quarry site, thereby benefiting wildlife and pasturage
9 consistent and compatible for farm use and generally in
10 compliance with the Comprehensive Land Use Plan Goals 3 and
11 5 shown hereafter.

12 C. The Hearings Officer finds that the applicant's
13 intended use does not seriously interfere with accepted
14 farming practices by virtue of the fact that applicant will
15 limit access to River's Drive (except for emergency access)
16 and will be using the property in a manner consistent with
17 agricultural pursuits and not opposed to it as set forth in
18 the Community Proposal (Exhibit "E").

19 D. While the Hearings Officer finds that a different
20 intended use including a use which could easily evolve from
21 the nature of the permanent structures proposed on the
22 subject property might alter the stability of the overall
23 land use pattern in the area, that the application of, and
24 the assurances of the applicant are such that the property
25 will be used by religious groups under family supervision
26 such that vandalism, mischief, or the general incidents of
27 urbanization (motorcycles, ATV's, domestic animals running
28 at large on adjoining properties) are not probable.

E. The land while it generally qualifies for EFU-CG

1 designation is not well suited for production of farm crops or
2 grazing of livestock primarily because of the prior rock
3 extraction activities. The reclamation planned by the applicant
4 is extensive and is more likely to improve agricultural, live-
5 stock and wildlife conditions rather than to cause its deteri-
6 oration.

7
8 F. Subject to the conditions which follow, the Hearings
9 Officer finds with the following conclusions that this
10 approval will be consistent with all land use planning
11 criteria and goals.

12 G. The Hearings Officer is not unmindful that the
13 proposed improvement if in the hands of other than the
14 present applicant, could be used with little or no modifi-
15 cation as a regional correctional facility, juvenile
16 correctional facility, camp for delinquent youths, facility
17 for treatment for mental or emotional problems, or for
18 chemical dependency. The Hearings Officer specifically
19 finds from the testimony at the hearing that the applicant,
20 through Reverend Hankins and Mr. Don Stonehill, and from
21 Exhibit "E", that the applicant will care for pre-delinquent,
22 dependent, abandoned, abused and neglected children
23 primarily up to the age of 15; children whose presence on
24 the property will not threaten farm use. At the same time,
25 the Hearings Officer finds that a change in ownership and/or
26 direction in either the use or the clientele served will
27 constitute a substantial deviation from the terms under
28 which this Conditional Use Permit is granted and will
require prior to either change in ownership or use, further

1 review of this Conditional Use Permit for compliance.
2 In this regard, the Hearings Officer finds that:

- 3 1) the costs of development;
4 2) the nature of the permanent improvements;
5 3) the costs of investment;

6 are not to be considered at a subsequent hearing to bootstrap
7 a subsequent change of ownership or direction into approval, by
8 virtue of any particular hardship created on the owner or
9 applicant. It being understood that agricultural land and its
10 uses are fragile and that it is one thing to have children who
11 are the subject of tragic circumstances being raised in a
12 compassionate home environment and learning to respect the land;
13 and another thing altogether to either be a correctional camp or
14 camp-like facility dealing with abberant behavior and with its
15 intended problems, abuses or demands on the land.

16 8. The Hearings Officer finds that this application com-
17 plies with the Comprehensive Land Use Plan of Klamath County as
18 follows:

19 A. Goal 1 (Citizen Involvement) has been met through
20 publication in the Herald & News, notice to surrounding
21 property owners and public hearing. The Hearings Officer
22 specifically finds that no one has appeared at this hearing
23 to oppose the applicant's plan as explained by the
24 applicant's proposal, previously designated as Exhibit "E".

25 B. Goal 2 (Land Use Planning) has likewise been met as
26 set forth in the specific findings above and in addressing
27 the concerns of Mr. L.B. Jones of the Modoc Irrigation
28 District and of applicant's intention to coordinate plans

1 with the Oregon State Fish & Wildlife Department. This
2 application is further consistent with the Land Use Plan
3 of Klamath County.

4 C. Goal 3 (Agricultural Lands) has been met as set
5 forth above. Applicant's use is consistent with the
6 policies of agricultural lands, more specifically in proper
7 use of Class IV soils through the more intense use than
8 farming practices which are anticipated by applicant.

9 D. Goal 4 (Forestry). While the timbersite has a
10 productivity rating of 5 and has previously been logged,
11 applicant's development is consistent with the establishment
12 of tree growth on areas not used in farming.

13 E. Goal 5 (Natural Resources) required that a 3C
14 decision under 83.003(C) must be met. The Hearings Officer
15 finds that a management plan, an agreement with the Oregon
16 Department of Fish and Wildlife, has been tentatively met.
17 Should it not be consummated prior to building permit
18 approval, this approval shall be stayed. In addition
19 thereto, the Hearings Officer finds that the 100 repairing
20 setback will be maintained by virtue of the development
21 plans found in Exhibit "D".

22 F. Goal 6 (Resources Quality) shall be met, based upon
23 repairing setback, DEQ approval of subsurface septic, and
24 exceeding the minimum lot size requirement of the existing
25 comprehensive plan and zone requirements.

26 G. Goal 9 (County Economy) will marginally be met based
27 upon short scale benefits through construction, more long
28 term benefits by providing community facilities to meet

1 identified needs.

2 H. Goal 10 (Housing) will be met by creation of foster
3 family home units, a need apparently identified by the
4 State of Oregon and by the applicant as testified to the
5 need and demand by Mr. John Bender and Reverend Hankins.

6 I. Goal 11 (Public Facilities) has likewise been met in
7 that community facilities are generally available within
8 the area of which there is not evidence that existing
9 development will overburden.

10 J. Goal 12 (Transportation) has been complied with,
11 subject to the condition that primary access be gained off
12 River Drive, adequate transportation facilities are
13 available to serve the proposal.

14 The Hearings Officer specifically finds that all other goals
15 not specifically addressed are deemed inapplicable to this
16 application.

17 All proposed Findings of Fact submitted by the applicant or
18 Conclusions of Law not specifically contradicted are hereby
19 approved.

20 Based upon the above Findings of Fact, the Hearings Officer
21 makes the following Conclusions of Law:

22 CONCLUSIONS OF LAW:

23 1. The proposed use is conditionally permitted in the zone
24 within which it is proposed to be located.

25 2. The location, size, design and operating characteristics
26 of the proposed use are in conformance with the Klamath County
27 Comprehensive Plan.

28 3. The location, size, design and operating characteristics

1 of the proposed use will be compatible with and will not have a
2 significant adverse affect on the appropriate development and use
3 of abutting property of the surrounding area. The granting of
4 this Conditional Use Permit is consistent with the goals of the
5 Land Conservation and Development Commission.

6 4. The granting of this Conditional Use Permit is subject
7 to the following conditions:

8 A. Reclaim unproductive acreage by establishment of
9 pasturage over 20 acres presently consisting of overburden
10 and establishment of a small recreational lake on the rock
11 quarry site, thereby benefiting wildlife and pasturage
12 consistent and compatible for farm use and generally in
13 compliance with the Comprehensive Land Use Plan Goals 3 and
14 5 as shown hereafter.

15 B. The Hearings Officer finds that the applicant's
16 intended use does not seriously interfere with accepted
17 farming practices by virtue of the fact that applicant will
18 limit access to River Drive (except for emergency access)
19 and will be using the property in a manner consistent with
20 agricultural pursuits and not opposed to it as set forth in
21 the Community Proposal (Exhibit "E").

22 C. While the Hearings Officer finds that a different
23 intended use including a use which could easily evolve from
24 the nature of the permanent structures proposed on the
25 subject property might alter the stability of the overall
26 land use pattern in the area, that the application of, and
27 the assurances of the applicant are such that the property
28 will be used by religious groups under family supervision

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such that vandalism, mischief, or the general incidents of urbanization (motorcycles, ATV's, domestic animals running at large on adjoining properties) are not practical.

D. The land while it generally qualifies for EFU-CG designation is not well suited for production of farm crops or grazing of livestock primarily because of the prior rock extraction activities. The reclamation planned by the applicant is extensive and is more likely to improve agricultural, livestock and wildlife conditions rather than to cause its deterioration.

The Hearings Officer based upon the foregoing, accordingly orders as follows:

That real property described as:

"that portion of government Lots 11, 13, 17, 18, 23, 24, 28, and 29 of Section 20, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, lying southerly of the Williamson River and excluding therefrom Tax Lots 2500 and 2400."

is hereby conditionally granted as a Conditional Use Permit in accordance with the terms of the Klamath County Zoning Ordinance Land Development Code.

Entered at Klamath Falls, Oregon, this 17 Day of December, 1985.

KLAMATH COUNTY HEARINGS DIVISION

Bradford J. Aspell
Bradford J. Aspell, Hearings Officer

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of December A.D., 19 85 at 1:57 o'clock P M., and duly recorded in Vol. 1135 day
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FEE NONE

Return: Commissioners Journal

Evelyn Biehn, County Clerk
By *[Signature]*