

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for)	
Conditional Use Permit 1-86)	Klamath County Planning
for Robert and Burkett Johnson)	Findings of Fact and Order

A hearing was held on this matter on February 6, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad Aspell. The applicant was represented by Burkett M. Johnson. The Planning Department was represented by Kim Lundahl. The Hearings Reporter was Janet Libercajt.

Evidence was presented on behalf of the Department and on behalf of the applicant. There were no 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, Plot Plan
 Klamath County Exhibit C, Assessor's Map
 Klamath County Exhibit D, Revised Plot Plan
 Klamath County Exhibit E, Survey Map

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:

1. Applicants Robert M. Johnson and Burkett M. Johnson, brothers, are the owners of the subject property which consists

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1 of a portion of the West $\frac{1}{2}$, Southeast $\frac{1}{4}$ located in Section 17,
 2 Township 41, Range 8 East Willamette Meridian, Klamath County,
 3 Oregon, consisting of Tax Account Numbers 4108-01-700-200, 300,
 4 1000, 1100. The subject property is located three miles south of
 5 Worden, approximately one mile west of U.S. Highway 97, near the
 6 California State Line. It consists of approximately 67 acres to
 7 be divided into two parcels, one of 43.1 acres and the other
 8 approximately 24 acres. The subject property is designated as
 9 Forestry (F) by the Klamath County Comprehensive Land Use Plan
 10 and designated as Forestry Range (FR) under the appropriate
 11 zoning designation. The property is rectangular and has
 12 moderate slope, generally slopes from the south to the north.
 13 Drainage is from surface runoff in the general direction of the
 14 south. Access to the property is via Keno to State Line Wagon
 15 Road, west from Highway 97. Vegetation consists of mixed Conifer
 16 and Juniper. The property has SCS soil class of VII and
 17 timbersite productivity of Class III. The property surrounding
 18 subject land is designated as F (Forestry) in the Comprehensive
 19 Plan and carries a zone designation of FR (Forestry-Range).
 20
 21 2. Monumental confusion existed at hearing on the part of
 22 the applicant and staff regarding adjacent properties and use of
 23 the subject lands. Accordingly the Hearings Officer relies
 24 heavily on Exhibit "B", applicant's topographical map and
 25 Exhibit "C" a portion of the Assessor's Map. Exhibit "B"
 26 illustrates applicant's proposal. Applicant seeks a Conditional
 27 Use Permit to allow a non-farm dwelling on a portion of the sub-
 28 ject property incidental to a partition request which is not a
 part of this hearing. The property presently has a house and

1 barn near the southerly boundary, immediately north of the
2 Oregon-California State border, which constitutes the southerly
3 boundary of the property. A roadway, which the Hearings Officer
4 believes to be a prescriptive easement known as the Keno-State
5 Line Wagon Road (not Owens Road as reported by Staff) meanders
6 directly through the property and through a number of different
7 ten acre parcels to the northwest. The ownership of these
8 parcels was not disclosed at the time of hearing. The property
9 is served by Pacific Power & Light (electricity), water is
10 provided by individual wells, sewer by individual subsurface
11 septic tank systems. The property is located within the Klamath
12 County School District, Keno School attendance area. Fire
13 protection is provided by the Oregon State Department of
14 Forestry.

15 3. Applicant seeks a Conditional Use Permit under Klamath
16 County Land Development Code, Section 51.021(d) and Section
17 44.003 to permit a non-forest use in the Forestry Range zone.
18 The Hearings Officer is required to make six specific Findings
19 of Fact prior to approval. The Hearings Officer specifically
20 finds as follows:

21 A. A large homesite as proposed in the Forestry Range
22 zone, taking into consideration the property, topography,
23 the existing vegetation, and development in close proximity
24 of other small parcels, causes the Hearings Officer to
25 conclude approval of the Conditional Use Permit in the
26 Forest-Range zone and will not be incompatible with Forest-
27 Range uses.

28 B. Based upon a failure of any testimony indicating

adverse effects upon adjacent lands devoted to forest use, the Hearings Officer concludes that there are none.

C. The property is bisected by a public easement of historical significance, and the surrounding property consists of adjacent small parcels of approximately ten acres in size; this causes the Hearings Officer to conclude that the granting of the Conditional Use Permit would not materially alter the stability of the overall land use pattern in the area.

4. The overall property, consisting of 67 acres, is comprised of marginal soils for agricultural production and nominal timbersite productivity rating, being Class III. Historical data suggests that the property has not been used for the production of forest crops or grazing of livestock during recent history in large part due to soils, lack of water, the diverse way in which the properties have been created in the soil itself.

5. The timbersite productivity rating of Class III and historical use of the land indicates marginal forest site productivity, and it is arguable that an additional homesite may through the advent of more intense land use will improve forestry and range productivity of the subject land.

6. The Hearings Officer is cognizant of the fact that the property is situate within the medium fire danger area shown in the Klamath County Planning Department Wildlife Hazard Rating Map; however, the lack of input from the applicant, the Planning Staff or the Department of Forestry suggests that no public agency wishes to recommend any fire protection measures or

1 alternatives and hence adequate fire protection must be deemed
2 available.

3 7. The Land Development Code requires that an application
4 of the Conditional Use Permit, Section 43.003 (Review Criteria)
5 must be met. These criteria require:

6 A. That the use be conditionally permitted in the zone
7 for which it is proposed to be located. Such use is
8 conditionally permitted under Section 51.021D(2). That the
9 location, size, design and operating characteristics of the
10 proposed use are in conformance with the Klamath County
11 Comprehensive Plan. Applicable review criteria of the
12 Klamath County Comprehensive Plan are discussed in the
13 paragraph which follows.

14 B. That the location, size, and operating charac-
15 teristics of the proposed development will be compatible
16 with and not have significant adverse effects upon the
17 appropriate development and use of abutting properties and
18 the surrounding neighborhood. The Hearings Officer
19 specifically finds that the surrounding neighborhood
20 includes a number of small parcels in Forest-Range use
21 which the addition of one more on forest dwelling would
22 not have substantial effect or impact.

23 The Hearings Officer finds the following Klamath County
24 goals to apply:

25 Goal 1 (Citizen Involvement) has been met in that public
26 notice has been given to adjacent property owners, concerned
27 public agencies, notice has been published in the Herald & News,
28 and a public hearing has been held for receipt of public input.

1 Goal 2 (Land Use Planning) has been met. The property is
2 zoned Forest-Range use. Pursuant to LDC, Section 51.021(D), a
3 non-forest homesite is permitted under Conditional Use Permit.

4 Goal 3 (Agricultural Lands), is not applicable.

5 Goal 4 (Forest Lands) has been met. The Hearings Officer
6 concludes that there will be no effective change in the Forest-
7 Range practices conducted on the subject property by granting
8 the Conditional Use Permit and indeed more active forest-range
9 practices may result.

10 Goal 5 (Open Spaces, Scenic, Historic & Natural Resource
11 Areas); Goal 6 (Air, Water and Land Resource Quality); Goal 7
12 (Natural Disasters and Hazards); Goal 8 (Recreation Needs); and
13 Goal 9 (County Economy) are not applicable.

14 Goal 10 (Housing) has been met as approval of the
15 application will create another homesite in areas in which
16 numerous homesites exist already.

17 Goal 11 (Public Facilities and Services) will likewise be
18 met: electricity is available by Pacific Power & Light Company;
19 telephone by Pacific Northwest Bell; the property lies within
20 the Keno attendance area of the Klamath County School District.
21 The property will be subject to individual wells and septic
22 approval which the property generally seems suited, and while
23 property does not lie on a maintained public road, nor will there
24 be fire protection necessary to protect a residence, the property
25 seems to minimally qualify as having the number of requisite
26 public facilities and services necessary.

27 Goal 12 (Transportation): The property is bisected by a
28 historical public easement of long duration. Access and egress

1 through easement may pose a problem; however, the creation of
2 one additional homesite in this area poses a di minimus concern.

3 Goal 13 (Energy Conservation), Goal 14 (Urbanization) are
4 not applicable.

5 8. Pursuant to the Klamath County Land Development Code,
6 Section 44.003 and Section 44.004F, the Hearings Officer may
7 apply conditions on the application. In this regard the Hearings
8 Officer finds as follows:

9 A. This application is approved on the condition that
10 the existing Minor Partition previously being applied for
11 be granted not later than 90 days following the effective
12 date of this Order.

13 B. That construction of the non-farm dwelling be
14 commenced within two (2) years from the date of this Order.

15 Based upon the foregoing Findings of Fact, the Hearings
16 Officer makes the following Conclusions of Law:

17 CONCLUSIONS OF LAW:

18 1. That the use is conditionally permitted in the zone in
19 which it is proposed to be located.

20 2. That the location, size, design and operating charac-
21 teristics of the proposed use are in conformance with the
22 Klamath County Comprehensive Plan.

23 3. That the location, size, design, and operating charac-
24 teristics of the proposed development will be compatible with
25 and will not have significant adverse effects on the appropriate
26 development and use of abutting properties and the surrounding
27 neighborhood. Consideration shall be given to harmony in scale,
28 bulk, coverage, and density; to the availability of civic

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1 facilities and utilities; to harmful effects, if any, upon
2 desirable neighborhood characteristics and livability; to the
3 generation of traffic and the capacity of surrounding streets;
4 and to any other relevant impact of the development.

5 4. Subject to the following conditions:

6 A. This application is approved on the condition that
7 the existing Minor Partition previously being applied for be
8 granted not later than 90 days following the effective date
9 of this Order.

10 B. That construction of the non-farm dwelling be
11 commenced within two (2) years from the date of this Order.
12 The Hearings Officer, based on the foregoing, orders
13 as follows:


14 That real property described as

15 "Being generally located one mile west of U.S. Highway 97
16 at State Line, and more particularly described as a
17 Portion of the W $\frac{1}{2}$, SE $\frac{1}{4}$ of Section 17, Township 41 South,
18 Range 8, Klamath County, Oregon,"

19 is hereby conditionally granted a Conditional Use Permit in
20 accordance with the terms of the Klamath County Zoning Ordinance
21 No. 45.2, and, henceforth, will be allowed a family residence
22 in the FR (Forest-Range) zone.

23 Entered at Klamath Falls, Oregon, this 23 Day of
24 April, 1986.

25 KLAMATH COUNTY HEARINGS DIVISION

26 
27 Bradford J. Aspell
28 Hearings Officer

C.U.P. 1-86/Johnson
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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of April A.D., 19 86 at 2:05 o'clock P M., and duly recorded in Vol. 28th day
of Deeds on Page 7216 M86

FEE NONE

Return: Commissioner's Journal

Evelyn Biehn, County Clerk
By 