

Vol. 1786 Page 23541

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF KLAMATH COUNTY, OREGON

In the Matter of the Request for
Conditional Use Permit 40-86 for
Donald Crane on behalf of Maryetta
Gentry and the Estate of Mildred
Riddle

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Order #87-145

THIS MATTER having come on for hearing before the Klamath County Board of Commissioners on November 12, 1986 with the applicant represented by attorney, B. J. MATZEN and the opponent PERLA DEVELOPMENT COMPANY represented by attorney JERRY MOLATORE. KLAMATH COUNTY was represented by County Counsel ROBERT D. BOIVIN, staff was present and represented by CARL SHUCK and ROY HUBERD. The hearing was reported by Karen Burg and was held pursuant to notice given in conformity with the Klamath County Land Development Code and related ordinances.

Evidence was presented on behalf of the department, the applicant and the opponent. The following exhibits were offered, received and made a part of the record:

part of the record:

Klamath County Exhibit A, Staff Report
Klamath County Exhibit B, Assessors Map
Klamath County Exhibit C, Partition Map
Klamath County Exhibit D, Health Department Letter
Klamath County Exhibit E, Soil & Water Conservation
District Letter
Klamath County Exhibit F, Klamath County

Klamath County Exhibit F, Klamath Circuit Court
Amended Interim Order in Case No. 22-275

Klamath County Exhibit G, Photographs
Klamath County Exhibit H, Henry J. Caldwell, Jr.
Appraisal
Klamath County

Klamath County Exhibit I, Order on C.L.U.P. & Z.C.

Klamath County Exhibit J, Assessors Maps submitted
by Henry J. Caldwell, Jr.

The hearing was then closed and based upon the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE ONE

B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091,

1 evidence submitted at the hearing, the Board of
2 Commissioners make the following findings of fact,
3 conclusions of law and decision. In so doing the Board
4 recognizes the facts set out herein often are applicable
5 to more than one finding or conclusion and, therefore, are
6 treated as cumulative and supplementary.
7

8 FINDINGS OF FACT

9 1. In this application, DONALD CRANE was acting in
10 behalf of Maryetta Gentry and the Estate of Mildred Riddle
11 who own an undivided portion of Government Lots 27, 28, 29
12 and 30, SW $\frac{1}{4}$ Section 5, Township 35S, Range 7E, Willamette
13 Meridian, Klamath County, Oregon, bearing tax account
14 numbers 3507-5-1000-U1 through U14, which property is
15 subject to an Amended Interim Order in Klamath County
16 Circuit Court Land Partition Case No.: 82-1579-1 where
17 Gentry and the Riddle Estate were made responsible for
18 applying for the present conditional use permit and minor
19 partitioning to determine whether the Klamath County
20 Board of Commissioners would approve the partitioning of
21 21.84 acres from the total parcel.

22 2. The parcel is presently designated by the Klamath
23 County Comprehensive Plan as agriculture and carries a
24 zone designation of exclusive farm use-cropland/grazing
25 (EFU-CG). It is bounded on the south side and at the
26 northwest corner by a rural (R-1) zone, on the north-
27 east by a forestry (F) zone with the remaining surround-
28 ing zoning being EFU-CG and containing parcels ranging in
size from 40 acres down to 4 acres with the majority

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE TWO

B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091

1 around 20 acres. Applicant seeks a conditional use permit
2 to allow a non-farm dwelling on each of the partitioned
3 parcels of 21.84 acres and 55.31 acres.

4 3. Both of the partitioned parcels in the subject
5 property front on State Highway 62 (a paved, two
6 lane main arterial with state maintenance) and are
7 located approximately two miles northwest of State
8 Highway 97. The State Highway Division has recommended
9 the road approaches for the two parcels be combined
10 into one location for safety.

11 4. The total parcel is relatively flat with
12 natural runoff drainage and is covered with brush plus
13 some trees and native grasses. It is totally undeveloped,
14 even from an agricultural standpoint and would not be an
15 economical farming unit as evidenced by the testimony
16 of applicant's appraiser who stated a person might be
17 able to run a cow and calf on the whole parcel for only
18 two months a year. He stated this would provide
19 approximately \$118.00 income and the current yearly
20 taxes alone on the parcel are \$358.66.

21 This is consistent with the findings of the Klamath
22 County Planning Commission in ZC No.583 where they rezoned
23 the 118 acres immediately to the south of the subject
24 property to permit one acre lots (now R-1) and found in so
25 doing " . . . there would be approximately a minus \$545.89
26 when [the 118 acres was] being used for cattle management".

27 5. The Planning Commission in ZC 5-83 further found
28 the parcel therein " . . . was in an area where lots were
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE THREE

B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091

1 for residential use and not an agricultural area". The
2 surrounding neighborhood is approximately 40% built-up
3 with improved residential development and trends in the
4 area are toward residential uses.

5 6. The parcel is within the Chiloquin-Agency Lake
6 Fire District and the Chiloquin School District with local
7 schools and medical facilities being located within ten
8 minutes of the site. Electricity is available at the
9 site from Pacific Power and Light Company and telephone
10 from Pacific Northwest Bell Telephone, although neither
11 are installed at the present time. Water would be
12 provided by a private domestic well and sewer by a private
13 septic system which would require approval of the Klamath
14 County Health Department prior to installation. Soils on
15 the parcel are class IV and the timber site productivity
16 rating is not applicable.

17 7. A survey taken in January 1986 shows sales of
18 parcels in the local or competing neighborhoods ranging in
19 size from 5.4 acres to 25 acres and having topography
20 and access similar to the parcel in this case which
21 took place between August of 1984 and November 1985. This
22 establishes a need exists for parcels of the size re-
23 quested which permit the use requested.

24 8. Section 44.003 of the Klamath County Develop-
25 ment Code requires and the Board finds the proposed
26 conditional uses satisfy the criteria of section 44.003
27 and all other criteria and standards of the Code and other
28 applicable county codes and ordinances. This finding

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B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
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1 includes, but is not limited to, the following:

2 A. That the uses are conditionally permitted in
3 the zone in which they are proposed to be located.

4 B. That the location, size, design, and operating
5 characteristics of the proposed uses are in conformance with
6 the Klamath County Comprehensive Plan. In this regard the
7 Board finds:

8 (1) Goal 1 (Citizen Involvement) has been
9 met as notice has been given to adjacent property owners and
10 affected public agencies by mailing of notice and publica-
11 tion in the Hearld and News. A public hearing has been
12 called, held and a decision rendered. The Board
13 specifically finds that ample opportunity for public input
14 and consideration of this application has been afforded
15 all potentially interested parties.

16 (2) Goal 2 (Land Use Planning) has been met.
17 Public hearings have been held and policies and procedures
18 of the Klamath County Land Development Code have been
19 applied as set forth hereinabove.

20 (3) Goal 3 (Agricultural Lands) has been
21 met for although the site has class IV soils it is not an
22 economic agricultural farming unit, is undeveloped for
23 agricultural purposes and is surrounded by land already
24 in residential use or zoned to permit it. Also, the
25 parcels will remain in the agriculture EFU-CG zone and
26 subject to its restrictions.

27 (4) The following goals either do not
28 directly apply or are not applicable to this request:

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER - PAGE FIVE

B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091

1 Goal 4 (Forest Lands); Goal 8 (Recreational Needs); Goal 9
2 (Economy of the State); Goal 13 (Energy Conservation); and
3 Goal 14 (Urbanization).

4 (5) Goal 5 (Open Spaces, Scenic, Historic
5 and Natural Resource Areas) has been met by limiting the
6 density of development to two dwelling units on 77 acres,
7 a level significantly less than allowed in adjoining zones.

8 (6) Goal 6 (Air, Water and Land Resource
9 Quality) has been met because septic tank systems installed
10 on the subject parcels will be subject to County Health
11 Department approval and the density level authorized is
12 much lower than on surrounding land so that the possibility
13 of pollution is greatly lessened.

14 (7) Goal 7 (Natural Disaster and Hazard
15 Areas) has been met. The site is within the Rural Fire
16 Protection District, has only a 0% to 2% slope with
17 adequate drainage and is not located in a flood hazard
18 area.

19 (8) Goal 10 (Housing) has been met for non-
20 farm dwellings. Approving these two permits will promote a
21 housing type for which a need has been shown.

22 (9) Goal 11 (Public Facilities and
23 Services) has been met in that no additional utilities,
24 services or extensions are required for this application
25 nor will approval of this application significantly affect
26 adjoining development or the need or demand for additional
27 facilities or services.

28 (10) Goal 12 (Transportation) has been met.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE SIX

B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091

1 Highway 62 is adequate in size and shape to facilitate the
 2 uses normally associated with two dwelling units and
 3 combining road approaches into one access will
 4 optimize safety needs.

5 C. That the location, size, design and
 6 operating characteristics of the proposed developments
 7 will be compatible with and will not have significant
 8 adverse effects on the appropriate development and use of
 9 abutting properties and the surrounding neighborhood. Con-
 10 sideration has been given to harmony in scale, bulk,
 11 coverage, and density; to the availability of civic
 12 facilities and utilities; to harmful effects, if any,
 13 upon desirable neighborhood characteristics and liability;
 14 to the generation of traffic and the capacity of surround-
 15 ing streets; and to any other relevant impact of the
 16 developments.

17 (10) In like manner Section 51.018 D of
 18 the Land Development Code requires and the Board finds
 19 that each dwelling applied for:

20 A. is compatible with farm use as
 21 defined in that Code and consistent with the agricultural
 22 land use policy adopted by the legislative assembly in
 23 ORS 215.243,

24 B. does not interfere seriously
 25 with accepted farming practices on adjacent lands
 26 devoted to farm use,

27 C. does not materially alter the
 28 stability of the overall land use pattern of the area.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE SEVEN

B. J. MATZEN, Attorney at Law
 601 Main Street, Suite 216
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 OSB #: 70091

- 1
2 D. is situated upon generally
3 unsuitable land for the production of farm crops
4 and livestock, considering the terrain, adverse soil
5 or land conditions, drainage and flooding, vegetation,
6 location and size of the tract, and
7 E. complies with such other conditions
8 as the Board considers necessary.
9

10 CONCLUSIONS OF LAW

- 11 1. The proposed uses are conditionally permitted in
12 the zone in which they are proposed to be located.
13 2. The location, size, design, and operating charac-
14 teristics of the proposed uses are in conformance with
15 the Klamath County Comprehensive Plan.
16 3. The location, size, design and operating
17 characteristics of the proposed development will be
18 compatible with and will not have significant
19 adverse effects on the appropriate development and use
20 of abutting properties and the surrounding neighborhood.
21 4. The proposed uses are supported by specific
22 studies and other factual information which document
23 the public need for the uses.
24 5. Each proposed non-farm dwelling use is
25 compatible with farm use as defined in the Klamath
26 County Land Development Code and consistent with the
27 agricultural land use policy adopted by the
28 legislative assembly in ORS 215.243.
29 6. Each proposed non-farm dwelling use

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE EIGHT

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601 Main Street, Suite 216
Klamath Falls, OR 97601
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OSB #: 70091

1 does not interfere seriously with accepted farming
2 practices on adjacent lands devoted to farm use.

3 7. Each proposed non-farm dwelling use does not
4 materially alter the stability of the overall land use
5 pattern of the area.

6 8. Each proposed non-farm dwelling use is
7 situated upon generally unsuitable land for the
8 production of farm crops and livestock, considering
9 the terrain, adverse soil or land conditions,
10 drainage and flooding, vegetation, location and size
11 of the tract.

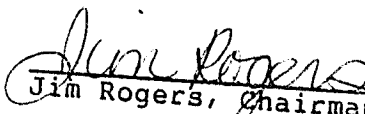
12 9. Each proposed non-farm dwelling use complies
13 with the condition imposed herein that the road
14 approaches for the two parcels have one access point
15 onto Highway 62.

16 DECISION

17 Based upon the above-made Findings of Fact and
18 Conclusions of Law and subject to the condition the
19 road approaches for the two parcels have a common access
20 location onto Highway 62, it is ordered this request for
21 Conditional Use Permits on the subject parcels herein
22 described is hereby granted.

23 DATED this 17th day of December, 1986.

24
25 KLAMATH COUNTY BOARD OF
26 COMMISSIONERS

27 
28 Jim Rogers, Chairman of the Board

B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091

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Roger Hamilton
Roger Hamilton, Commissioner

Out of Office
Carroll Zon Gerbert, Commissioner

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10 APPROVED AS TO FORM AND CONTENT:
11 Robert D. Boivin
12 Robert D. Boivin, County Legal Counsel
13

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of December

A.D., 19 86 at 2:43
of Deeds

FEE None

_____ o'clock P M., and duly recorded in Vol. 19th day
on Page 23541

Evelyn Bienn

By

County Clerk

Return to Commissioners Journal

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B. J. MATZEN, Attorney at Law
601 Main Street, Suite 216
Klamath Falls, OR 97601
Telephone: (503) 882-8501
OSB #: 70091

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER - PAGE TEN