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Vol. M87 Page 2169

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

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2
3 In the Matter of a Request for) C.U.P. 48-86
4 CONDITIONAL USE PERMIT) FINDINGS OF FACT,
5 for) CONCLUSIONS OF LAW
6 KENNETH E. FREE, JR.) AND ORDER

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8 THIS MATTER came on for hearing before Assistant
9 Hearings Officer, James R. Uerlings, on the 29th day of January,
10 1987, at 10:30 a.m. in the Klamath County Commissioners' Hearing
11 Room. A hearing on the same matter was previously held on
12 December 18, 1986, by a different Hearings Officer. That hearing
13 was continued to January 8, 1987, at which time it was again
14 continued until January 29, 1987. The current Hearings Officer
15 has reviewed the tapes in detail of the December 18, 1986,
16 hearing and there being no testimony taken at the January 8,
17 1987, hearing, no review was made of those tapes.

18 The hearing was held pursuant to notice given in
19 conformity with the Klamath County Development Code and related
20 ordinances.

21 The applicant, KENNETH E. FREE, JR., appeared in person
22 and the Planning Department was represented by Carl Shuck.

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

26 The Assistant Hearings Officer, after reviewing the
27 evidence presented, makes the following findings of fact,
28 conclusions of law and decision:

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OF LAW AND DECISION

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FINDINGS OF FACT:

1. The applicant has operated a portion of his security business, entitled "Linkville Security" on the subject property for several months. Upon learning that a conditional use permit was required for his activities on the property, the applicant filed a request for a conditional use permit on November 14, 1986.

2. Although that permit initially requested a conditional use permit for a kennel, that portion of the conditional use permit was withdrawn; therefore, the only issue before the Hearings Officer is a conditional use permit for home occupation.

3. The property is in an RS zone and this application is made pursuant to Article 85, Section 85.002 and Article 51, Section 51.005(c)(10).

4. The property is 307 feet west of Crest Street and on the south side of Onyx Street in Klamath County, Oregon; the legal description is the SW1/4, NE1/4 Section 10, Township 39, Range 9, Tax Lot 200, Klamath County, Oregon.

5. The plan designation for the property is Urban, the zone designation is Suburban Residential.

6. The property is 101' x 215' consisting of approximately 20,705 square feet (1/2 acre). The property is rectangular in shape. The topography is relatively level and general drainage consists of surface runoff into existing drains.

7. Access to the property is off Onyx Street, a dirt road.

8. In the area are located lots ranging in size from

1 1/2 acre to 1 acre with residential uses. Adjacent and
2 surrounding zoning is Suburban Residential.

3 9. The property is provided water by the City of
4 Klamath Falls and sewer is provided by South Suburban Sanitary
5 District. The property is also served by Fire District No. 1 and
6 electricity is provided by Pacific Power and Light.

7 10. Numerous citizens located within the area of the
8 applicant's residence appeared in opposition to the conditional
9 use permit. Additionally, a petition was submitted at the
10 hearing on January 29, 1987, expressing oppositions to the
11 continuation of Linkville Security as a business to be operated
12 out of Mr. Free's home. The primary reasons given for the
13 oppositions were:

14 A. The large amount of traffic created by the
15 employees and other persons going to and from Mr. Free's
16 residence, apparently related to the business

17 B. The large amount of dust created by the
18 vehicles as they travel down Onyx Street which is not a paved
19 street nor does it have any other maintenance to control the dust
20 from vehicles.

21 C. The noise generated by the car engines and
22 lights from vehicles which come and go from Mr. Free's property
23 24 hours a day in relation to the Linkville Security operations.

24 D. The fact that Onyx Street is apparently used
25 by a number of children in the area walking to and from Stearns
26 School and therefore, an increase in the number of vehicles
27 because of the location of this business on Onyx Street could
28 result in a safety hazard.

1 E. The driving habits of some of the Linkville
2 Security employees has raised safety concerns by the adjoining
3 property owners.

4 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

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

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

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

13 C. That the location, size, design and operating
14 characteristics of the proposed development will be compatible
15 with, and will not adversely effect, the livability or
16 appropriate development of abutting properties in the surrounding
17 neighborhood. Consideration shall be given to the harmony in
18 scale, bulk and utilities; to harmful effects, if any, upon
19 desirable neighborhood character; to the generation of traffic
20 and the capacity of surrounding streets and to other relevant
21 impact of development.

22 2. Article 85, Home Occupations, Section 85.003,
23 requires the following:

24 B. Conditions for Home Occupations - Approval of
25 home occupations shall be subject to the following findings:

26 1) That the occupation is conducted
27 entirely within a dwelling or a permitted accessory building.

28 2) That the occupation is not the primary

2) That the occupation is not the primary use and is operated by a resident of the property.

3) That the business will not employ more than five full or part-time persons.

4) That no equipment is used except such as may be used for purely domestic or household purposes.

5) That no more than twenty-five percent (25%) of the floor area of one story of the dwelling is devoted to such home occupation.

6) That the area of an accessory building used for a home occupation may not exceed fifty percent (50%) of the floor area of the residence.

7) That such occupation shall not require internal or external alterations, or involve construction features that change the principal character or use of the dwelling involved.

8) That only one (1) sign shall be permitted on the property, that said sign shall not exceed six (6) square feet in the area and shall be lighted at night.

9) That adequate off-street parking shall be maintained; and,

10) That any outdoor storage of materials be screened from view of the street by a sight-obscuring fence or hedge.

KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

1. GOAL 1-Citizen Involvement: See Exhibit "A" attached hereto and incorporated by this reference.

2. GOAL 2-Land Use Planning: See Exhibit "A".

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OF LAW AND DECISION

3. GOAL 11-Public Facilities & Services: See Exhibit "A".

4. GOAL 12-Transportation: See Exhibit "A".

5. GOALS 3,4,5,6,7,8,9,10,13 & 14 do not pertain or are not affected by this application.

KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

1. The proposed use is conditionally permitted under the Klamath County Land Development Code for the zone in which it is proposed.

2. The location, size, design and operating characteristics of the proposed use are not in conformance with the Klamath County Comprehensive Plan.

3. The location, size, design and operating characteristics of the proposed development will not be compatible with and will have a significant adverse effect on the appropriate development and use of abutting properties and the surrounding neighborhood. The Hearings Officer has given consideration to the harmony in scale, bulk, coverage and density, to the availability of utilities, to the harmful effects, (if any), upon the desirable neighborhood characteristics and livability, to the generation of traffic and the capacity of the surrounding streets and to other relevant factors effecting the impact of this development, including the criteria set forth in Section 85.002.

4. The rationale for my conclusion is that, based upon the number of objecting property owners, it is apparent that the applicant's use of the property and his employees' use of the property have been such that it detracts from the desirable

1 neighborhood characteristics of the neighborhood. The
2 opponents are concerned about the traffic generation, the noise of
3 the vehicles from Mr. Free's facility, the actions of his
4 employees, (especially their manner of driving along Onyx
5 Street), the apparent continual 24-hour operation of the facility
6 and the fact that there are children belonging to the opponents
7 and others in the area which use the road to travel to and from
8 school. Although the applicant has made his best efforts to
9 control the actions of his employees on the property, it appears
10 that there would be no purpose in allowing this type of
11 conditioned granting of this conditional use permit nor does it
12 appear worthwhile to grant the permit subject to conditions,
13 including a review within a short period of time.

14 4. It would appear that the only way that the
15 applicant could continue to operate the facility as in the past
16 is to propose conditions within which he feels he could operate
17 the business and which would alleviate the problems that the
18 opponents have raised. The applicant has not proposed specific
19 structured conditions. Due to the complexity of the opposition,
20 it is not possible for the Hearings Officer to do so. This must
21 be left to the applicant. If the applicant should desire to
22 propose specific structured conditions within which he feels that
23 the use can be granted, the Planning Department should allow the
24 application to be re-submitted without additional fee and set the
25 matter for hearing.

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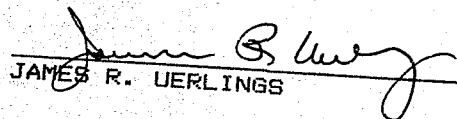
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1 CONCLUSIONS OF LAW AND DECISION:

2176

2 1. This request for a conditional use permit on the
3 subject property is denied for the reason that it does not meet
4 all applicable Klamath County Development Code criteria and
5 policies governing such.

6 DATED this 6 day of February, 1987.

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9 
10 JAMES R. UERLINGS

Conformance with Relevant Klamath County Policies:

Citizen Involvement

The County shall provide for continued citizen involvement.

The Planning Department sent notice to surrounding property owners and to agencies of concern. Notice was also published in the Herald & News and posted in public places.

Land Use Planning

The site is zoned RS (Suburban Residential) and per Article 85, Section 85.002, Home Occupations, all proposals for home occupations shall be conditionally permitted in any zone that allows residential use.

The RS zone allows residential use, and there is an existing house on the site.

Conditions for home occupations shall be subject to the following findings:

- B. Conditions for Home Occupations - Approval of home occupations shall be subject to the following findings:
1. That the occupation is conducted entirely within a dwelling or a permitted accessory building.
 2. That the occupation is not the primary use and is operated by a resident of the property.
 3. That the business will not employ more than five full or part-time persons.
 4. That no equipment is used except such as may be used for purely domestic or household purposes.
 5. That no more than twenty-five percent (25%) of the floor area of one story of the dwelling is devoted to such home occupation.
 6. That the area of an accessory building used for a home occupation may not exceed fifty percent (50%) of the floor area of the residence.
 7. That such occupation shall not require internal or external alterations, or involve construction features that change the principal character or use of the dwelling involved.
 8. That only one (1) sign shall be permitted on the property, that said sign shall not exceed six (6) square feet in the area, and shall not be lighted at night.
 9. That adequate off-street parking shall be maintained; and

Conformance with Relevant Klamath County Policies:

10. That any outdoor storage of materials be screened from view of the street by a sight-obscuring fence or hedge.

The additional proposed use is for a commercial kennel. In the RS (Suburban Residential) zone, lots must be over 20,000 square feet. Lot size is 20,705 square feet.

In order to approve a conditional use permit for a commercial dog kennel, the Hearings Officer must make findings from the following:

- A. That the use is conditionally permitted in the zone in which it is proposed to be located.
- B. That the location, size, design, and operating characteristics of the proposed use are 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 have significant adverse effects on the appropriate development and use of abutting properties and the surrounding neighborhood. Consideration shall be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effects, if any, upon desirable neighborhood characteristics and livability; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

Public Facilities

The site has electricity and telephone service, water, and sewer facilities. The site is located in Fire District No. 1.

Transportation

The site has two access points. Both are off of Onyx Street. There are parking areas on the west and east sides of the lot.

Exhibit "A", Page 2.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ 10th day
of February A.D., 19 87 at 2:20 o'clock P M., and duly recorded in Vol. M87
of _____ on Page 2169
Deeds

Evelyn Biehn,
By _____

County Clerk

FEE NO FEE

Return: Commissioners' Journal