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BEFORE THE BOARD OF COMMISSIONERS

KLAMATH COUNTY, OREGON

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1 IN THE MATTER OF CONDITIONAL USE)
2 PERMIT 38-87, ALEXANDER WILLIAMS,)
3 APPEAL OF DENIAL BY PLANNING COMMISSION)

ORDER NO. 88-159

4 I. NATURE OF APPLICATION

5 A public hearing on this appeal was conducted October 21, 1987
6 before the Klamath County Board of Commissioners. This appeal
7 requested reconsideration of the Planning Commission denial
8 August 25, 1987.

9 This appeal was considered pursuant to Article 33 of the
10 Land Development Code.

11 II. NAMES OF THOSE INVOLVED

12 The appellant, Alexander Williams, was represented by Mary
13 Cheyne and Richard Fairclo, Attorney at Law. The Planning Depart-
14 ment was represented by Kim Lundahl, Senior Planner. Karen Burg
15 was the recording secretary. Michael Spencer, County Legal Counsel,
16 was also present.

17 III. LEGAL DESCRIPTION

18 The property is located in Section 26 of Township 35S,
19 Range 12EWM, being five miles north of Beatty, east of Godowa
20 Springs Road.

21 IV. FACTS

22 The property has an agriculture Plan designation with the
23 zone being Exclusive Farm use-Cropland/Grazing. The property is
24 98.5 acres in size and is "L" shaped. The topography has a gentle
25 slope to the south with drainage running in the same direction.
26 The 98.5 acres is not being used as grazing land and is not under
27 Farm Tax Deferral. The parcel has access via existing roadway
28 easements extending from Godowa Springs Road. The soil as classified

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1 by the Soil Conservation Service is Class VI. The Timber Site
2 Productivity Rating is V. The adjacent and surrounding zoning is
3 Forestry Range to the east, north, and south, and EFU-CG to the
4 southwest. The property is outside of any sewer district and
5 can only be served by an individual subsurface system. The
6 property is served by the Beatty Rural Fire Protection District,
7 Pacific Power and Light, and the Bonanza School District.
8 The following exhibits were offered, received, and made a
9 part of the record:

10 Klamath County Exhibit A, Staff Report
11 Klamath County Exhibit B, Assessor's Map
12 Klamath County Exhibit C, Photos
13 Klamath County Exhibit D, Goal 5 Map
14 Klamath County Exhibit E, Plot Plan
15 Klamath County Exhibit F, Letter from Oregon Department of
16 Fish and Wildlife

17 V. RELEVANT APPROVAL CRITERIA

18 Opposition to this application was forwarded by the Oregon
19 Department of Fish and Wildlife (Exhibit F) indicating the project
20 is located in a Medium/Low Density Deer Winter Range. This
21 determination requires an 80 acre minimum lot size. The applicant
22 has proposed a 20 acre +/- lot size.

23 Applicant contacted Ralph Opp, ODFW, and could not agree on
24 a management plan.

25 Therefore, the criteria set out in Land Development Code
26 Section 83.004(C)(2) are applicable to this application. As this
27 is an application for a non-farm dwelling, the review criteria set
28 out in Land Development Code Section 51.018(D)(1-5) are also appli-

1 cable to this application.

2 The Board of Commissioners has reviewed the transcript of
3 the August 25, 1987 Planning Commission hearing, heard argument,
4 and reviewed the information in the Planning Department file.

5 VI. FINDINGS AND CONCLUSIONS

6 Based on this, the Board finds the criteria required by
7 Section 83.004(C)(2) has been satisfied. Exhibit G (attached) is
8 the applicant's statement on conformity with these criteria.

9 The Board finds this statement demonstrates conformity with
10 Section 83.004(C)(2).

11 Further, the Board finds the applicant has satisfied the
12 above review criteria of Section 51.018(D)(1-5) in that the pro-
13 posed residence for a non-farm dwelling is:

14 1. compatible with farm use as defined in ORS 215.243 and is
15 not being violated in that the larger block of agricultural land
16 will not be used for farm use at a more intensive level than it is
17 presently being used;

18 2. the proposed dwelling will not interfere seriously with
19 accepted farming practices on adjacent lands devoted to farm use
20 because the new building will be used in conjunction with the
21 EFU-CG zone; and

22 3. the proposed dwelling will not materially alter the sta-
23 bility of the overall land use pattern of the area, mainly because
24 of its small size, that being a proposed 18.6 acre parcel.

25 4. is situated upon generally unsuitable land for the pro-
26 duction of farm crops and livestock, considering the terrain,
27 adverse soil or land conditions, drainage and flooding, vegetation,
28 location and size of the tract, and

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1 5. complies with such other conditions as the Board of
2 Commissioners or its designate considers necessary.

3 VII. ORDER

4 Therefore, the Board of Commissioners hereby orders Condi-
5 tional Use Permit 38-87 for a non-farm dwelling is approved con-
6 ditioned upon the filing of a partition establishing the twenty
7 acre parcel as a separate parcel.

8 Dated this 5th Day of November, 1987

9
10 BOARD OF COUNTY COMMISSIONERS

11 John Rogers
12 Chairman of the Board

13 Roger Williams
14 Commissioner

15 Robert Williams
16 Commissioner

17
18 Approved as to Form and Content:

19 Michael Spencer
20 Michael Spencer, County Legal Counsel

9 20380
MNP 19-87
CUP 38-87
SUMMARY OF PRESENTATION REGARDING NONFARM
PARTITION (MINOR PARTITION 19-87 and CUP NO. 38-87)

The site in question is substantially sagebrush and rocks. Other than minor seasonal grazing, the parcel has probably never been used for any agricultural use. The Planning Commission denied approval on the basis that the property is on the fringe of a minimum to low density deer winter range. The disapproval was in spite of the testimony which is summarized here and disregarded the fact that adjacent parcels have already been created and have not been shown to have a negative impact on the deer winter range.

The Planning Department staff recommended approval contingent upon addressing Items a. through g. on pages 5 and 5a of the Partition Staff Report. The testimony of Mary Cheyne and the staff addressed those matters as follows:

a. The applicant here will be substantially damaged if the partition is not allowed. Mr. Williams has informed us that he cannot use the property without selling the approximately 20 acres to his son-in-law and daughter. Without this possibility, the land will continue to be unutilized and the landowner will have the burden of taxes.

b. The use proposed will directly benefit the community and satisfies the substantial public need of development of the economy by bringing the out-of-state owners property development funds to our county. In addition, the testimony is clear that the deer winter range will be positively affected, not negatively, because of the increase of forage on property such as this by residential and possible agricultural development on the remaining 80 acres.

c. The proposed 20-acre and 80-acre parcels will not result in the loss of a rare irretrievable or irreplaceable natural feature or scientific opportunity as there are no reports of anything of that nature. The property is substantially sagebrush and rock.

d. The public will benefit due to the proposed partition. The benefit to the deer will be increased forage, and the use of this property will increase our tax base which will maximize public benefit if the partition is allowed.

e. The property is located north of Beatty near paved road. There is no known energy source, and there is a very low potential for energy development as there is no known energy source unique to this septic site.

f. The deer winter range is designated as medium to low density, and a proposed residence will not significantly alter or disturb the remainder of the winter range. As testified without opposition, any development will increase forage for the deer.

g. This proposed site is adjacent and near to other parcels of larger size as is proposed here. The property is generally near larger parcels including Fremont National Forest and other range land. Other development in the area includes parcels of the general size as proposed on private subdivision. The proposed partition is consistent with long-term game habitat values.

It is apparent to the undersigned that there aren't any other issues that have not been properly addressed. It is urged that the Planning Department Commission decision regarding the partition

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and C.U.P. be reversed and approve the applicant's request. As was pointed out at Planning Commission stage, the property will be squared off in an appropriate manner.

It is respectfully requested to approve the partition and C.U.P. as applied. Thank you for your consideration.

Respectfully submitted,

Robert J. Funch
attorney for applicant

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 9th day
of November A.D. 19 87 at 3:47 o'clock P M., and duly recorded in Vol. M87
of Deeds on Page 23076

FEE NONE

Return: Commissioners' Journal

Evelyn Biehn, County Clerk

By Sam Smith