

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request)
 for a Conditional Use Permit)
 for MARGARET PAULSON)

C.U.P. 41-87
 FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND ORDER

This matter came before Hearings Officer William M. Ganong on November 5, 1987 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to Notice given in conformity with the Klamath County Land Development Code and related ordinances. Margaret Paulson was present at the hearing and represented herself. The Klamath County Planning Department was represented by Mr. Carl Shuck and the Recording Secretary was Karen Burg. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact; Conclusions of Law and Decision:

FINDINGS OF FACT:

1. The Applicant has requested a Conditional Use Permit to operate a commercial Kennel pursuant to Article 51 of the Land Development Code in a RS Zone. The subject property is located generally at 2902 Crest Street, Klamath Falls, Oregon, and is Klamath County Tax Assessor Lot No. 700-1D Section 3, T.39S., R.9E., W.M. The subject parcel contains approximately 2.0 acres.
2. The Findings of Fact set forth in the Klamath County Planning Department Staff Report are adopted hereby and incorporated herein by this reference.

3. Mrs. Paulson currently has four dogs. She anticipates that if this permit is granted she will have ten dogs at the most. Mrs. Paulson also intends to sell some dog supplies, including food, and to become a distributor.

4. Robert Baker an adjoining landowner, testified that he is not able to use the rear portion of this lot because Paulson's dogs bark whenever he goes onto the rear portion of his lot. He also testified that gun shots or fireworks explosions emanate from the Paulson property from time to time, and that he is concerned that Crest Street can not carry any additional traffic in its current condition.

5. In rebuttal to Mr. Baker's testimony, Mrs. Paulson testified that she was not aware of Mr. Baker's concerns. She testified that her husband occasionally used gun noise to quiet the dogs barking, but that the gun is not used in the training process. She also testified that there had recently been a lot of traffic in and out of her property because her son, who is in the Armed Services, had been home on leave and numerous friends had come to visit him. She stated that Crest Street is dusty, but that the County School bus and other large vehicles and trucks use it on occasion. She testified that she only expects 10 customers a week to come to her property.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Article 44 of the Klamath County Land Development Code sets out the criteria for reviewing Conditional Use Permit applications.

KLAMATH COUNTY LAND USE GOALS AND POLICIES COMPLIANCE

The Goals and Policy Findings of the Klamath County Planning Department Staff Report are hereby adopted and incorporated herein by this reference.

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

1. Code Section 51.005 C provides that a Kennel is permitted, subject to a Conditional Use Permit, on lots containing more than 20,000 square feet. Article 11 of the Code contains definitions for "Kennel, Commercial" and "Kennel, Noncommercial." Section 51.005 C is not specific as to which type of Kennel is allowable in the RS Zone. Said Section refers to further definitions in chapter 9 of the Code. Said Chapter 9 contains "Use Classifications." The term "Kennels" only appears in Chapter 9 in Article 93, Section 93.004 D as part of the definition of "Animal Sales and Services: Kennels - ..."

Article 10 of the Land Development Code provides in part that the Code is intended to implement the Klamath County Comprehensive Plan. The Comprehensive Plan Policies and Implementation Ordinances constitute public restrictions on the private use of land and should be narrowly construed so as to limit the private use of land only if the Ordinances expressly limit the use.

In this case the County Code allows a "Kennel" in the RS Zone. As that term is not further limited, the Code shall be interpreted as allowing any Kennel, subject only to the minimum lot size requirement and the C.U.P. review criteria.

The subject property contains more than 20,000 square feet. The proposed use is conditionally allowed in the RS Zone.

2. The location, size, design and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan. In adopting the Land Use Code, Klamath County found that the establishment of a Kennel in the RS Zone was, subject to Conditional Use Permit criteria, in conformance with the Comprehensive Plan. As the proposed use in this zone does not involve any resource goal issues, and as the subject property has substantial publicly provided utilities and other services, the proposed use is in conformance with the Comprehensive Plan.

3. Subject to the Applicant's compliance with the conditions set forth hereinafter, the proposed development will be compatible with and will not have a significant adverse effect on the development and use of the surrounding neighborhood.

The adjoining property owner identified three areas of concern, two of which are related. The first concern is that the Applicant's existing dogs bark excessively when he attempts to enter the rear portion of his lot. The Applicant testified that her husband occasionally discharges a gun in order to stop the dogs from barking. Apparently there is a real problem with the noise created by the dogs and the Applicant's means of dealing with that problem creates additional disturbing noise for the neighbors, which is the second concern of the adjoining landowner.

The third concern raised by the adjoining neighbor is the condition of Crest Street. Crest Street is a public road which is

not well maintained. There is no evidence in the record that the Applicant is the cause of the problem or is failing to do anything that the law requires of her. Rather it appears that the County Road Department is either unaware of the problem or that it is not a priority project for it.

Mrs. Paulson testified that her business would generate only ten customer trips per week. There is no evidence in the record that said additional traffic will significantly impair the condition of the street or exceed its carrying capacity.

ORDER

The subject application for a Conditional Use Permit to operate a Commercial Kennel on the above described property is hereby granted, subject the Applicant complying with the following conditions:

1. There shall not be more than 10 dogs on the subject property at any time;
2. The Applicant shall control the Kennel so that the noise emanating from the property, including any barking, shall not unreasonably interfere with the peaceful use of other land in the surrounding neighborhood;
3. The Kennel shall be operated and maintained in an orderly and clean manner;
4. The Applicant shall comply with the requirements of all County Ordinances, agencies and officers.

DATED this 20th day of November, 1987.

21277


 William M. Canong
 Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Department the 24th day
 of November A.D., 19 87 at 3:31 o'clock P. M., and duly recorded in Vol. M87
 of Deeds on Page 21272

FEE NONE

Ret: Commissioners' Journal

Evelyn Biehn, County Clerk

By 