BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 76-89 AND MNP 44-89 FOR
MIKE MILOJKOVICH TO ESTABLISH THREE RESIDENCES NOT IN CONJUNCTION WITH FARM USE — ORDER

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1. NATURE OF THE REQUEST:

The applicant wishes to establish three residences not in conjunction with farm use on 19.55 acres in the Agency Lake Area.

Also considered was the request to partition the property into three parcels of 9.55, 5.0, and 5.0 acres each.

This request was heard by the Hearings Officer January 12, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformity with Land Development Code Sections 51.018 D and E 1 c. and with O.R.S. 215.243.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Richard C. Whitlock. The applicant appeared and offered testimony in support of the application and Doug Adkins also testified in favor of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Leanne Mitchel, Administrative Secretary.

3. LEGAL DESCRIPTION:

The property under consideration is located in the Northwest 1/4 of Section 31, Township 35 south, Range 7 east, W.M.. T.A. 3407-3100-1800.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The property is 19.55 acres in size and is under farm tax deferral. Land use and lot sizes to the west are similar to that and smaller than that proposed by this application. Residential land use and similar lot sizes are also found to the north of this project. To the

east are vacant properties of 10 acres m/l held for eventual residential use. To the south is a 65 acre property devoted to the production of grass hay last year. Fire protection is provided by the Chiloquin/Agency Lake Rural Fire District (approximately 1 to 1 1/2 miles away with a response time of 5 to 10 minutes).

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-f, and offered testimony show that the approval criteria as set out in Code section 51.017 D and E 1 c has been satisfied. The Hearings Officer finds this application;

1. Is compatible with farm use because:

The analysis of surrounding properties and their use indicates the size of the proposed parcel and the proposed use as large lot rural/residential are compatible with the adjacent land uses as the existing residential density of the area will not be increased. The applicant has demonstrated the predominant use of the area has evolved into large-lot residential and is no longer considered a commercial agricultural area. The Klamath County Planning Commission heard and found a similar application, C.U.P. 5-88, consistent with the required review criteria March 22, 1988. This application was west of the Modoc Point Hwy, only the width of the right-of-way away from the application under consideration.

2. Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use because:

The 65 acre property to the south is the only nearby parcel found to be devoted to farm use. The Construction of non-farm residences will not interfere with the on-going use as sufficient lot area is provided, 5 acres, to provide a buffer/setback from agricultural management practices.

The permit holder has proposed as a condition of this approval to file a re-

strictive covenant which will prohibit the permit holder and successors in interest from filing complaint concerning valid farming practices on adjacent lands. The Hearings Officer finds this will mitigate impact to the farm operation.

3. Does not alter the stability of the overall land use pattern of the area because:

The overall land use of the area is found to be large lot rural residential and will not be compromised by the conversion of an existing farm residence to a non-farm use. The land use pattern of the area will not be modified and will be perpetuated by the addition of two more non-farm residences to the area as large lot rural residential is the established predominant use of the area. The zoning for this area is clearly erroneous.

4. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract because:

The existing parcel is 19.55 acres in size. The Hearings Officer finds this parcel size unsuitable for commercial agricultural use due to its small size. The impact of removing 19.55 acres of land from the County farmland base is found minimal.

Partitions creating parcels less than the 80 acre minimum lot size for non-farm uses are reviewed per the criteria set out in L.D.C. section 51.018 E 1 c.

The Hearings Officer finds this partition conforms to these criteria as set out below:

1. The parcels created for non-farm use will be 9.55, 5.0, and 5.0 acres in size and will be developed to residential and accessory building use. The

land is not agricultural and the parcels are designed to use the least amount of agricultural land needed.

2. Access to the parcel is from the Modoc Point Hwy.. This is a county maintained paved road. Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of Mike Milojkovich for C.U.P. 76-89 and M.N.P. 44-89 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.

2. The Conditional Use Permit shall not be final nor shall a building permit for a non-farm dwelling be issued under this order until the applicant provides the Planning Department with evidence that the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use and that any additional tax penalty imposed by the County Assessor has been paid.

3. C.U.P. 76-89 will not be effective until M.N.P. 44-89 is filed in the office of the County Clerk.

4. M.N.P. 44-89 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

DATED this 18th day of January, 1990

Richard C. Whitlock, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required within ten days following the mailing date of this order.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 22nd day of Jan. A.D., 19 90 at 11:12 o'clock A M., and duly recorded in Vol. M90, of Deeds on Page 1408.

Evelyn Biehn County Clerk

FEE none By Pauline Musselman

Return: Commissioners Journal