

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 79-89 AND MNP 39-89 FOR
MERRILL L. NASH TO ESTABLISH A RESIDENCE
NOT IN CONJUNCTION WITH FARM USE

FINAL ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish an existing residence as a non-farm use on 64.7 acres, presently included within a 1785 acre agricultural property.

Also considered was the request to partition the property into two parcels of 64.7 and 1720 acres.

This request was heard by the Hearings Officer January 26, 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..

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.

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 portions sections 22, 25, 26, 27, 35, & 36 T 39S R 11E. Portions sections 30 & 31 T 39S R 12E. Portion section 1 T 40S R 12E. W.M..

4. RELEVANT FACTS:

A. Date of Purchase: 1985

B. Size of Holding: 1784.7 acres

Size of proposed nonfarm parcel: 64.7 acres

Size of Remainder: 1720 acres

C. Farm Assessment/Deferral

The subject property is assessed under the farm deferral program.

D. Property Owner: Merrill L. Nash

E. Present Land Use:

Parcel 1- 64.7 acres, homesite since completion of 2700 sq. ft. house in 1986. No resource use known to applicant in the past 15-20 years.

Parcel 2- 1720 acres, farm use as both cropland and livestock grazing.

F. Number of Dwellings: 2 (one proposed for non-farm designation on smaller parcel 1).

G. Predominant Soil Series/L. C. C.: Class III soils in the larger parcel (Parcel 2) and soil classification unknown for parcel 1. Parcel 1 is unsuitable for agricultural use due to contours and rocky composition and does not have enough usable grass for grazing use.

H. Topography:

Parcel 1: Rocky knoll, crest 100' higher than farm land, covered entirely by Juniper trees. Slope is approximately 10 to 15 degrees.

Parcel 2: Rolling farm ground typical of Langell Valley.

I. Surrounding Land Use:

The lands to the east and west are farmlands used primarily for production of grain crops, alfalfa, and for grazing. There are at least three comparably sized properties nearby, which are not primarily agricultural in use, as follows: 1. 19 acres, 2.5 miles east; 2. 80 acres, 1.5 miles east; and 3. 20 acres, 1.6 miles east.

J. Compatibility with Lands within 1/2 mile radius:

Range of parcel sizes: 240 to 2000 acres

Number of parcels: total of five, all larger than proposed smaller parcel. There are, however, three similarly sized parcels within a 2.5 mile distance.

K. Structural Fire Protection: Bonanza Rural Fire District

L. Wildland Fire Protection: Oregon Dept. of Forestry

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-and C-1 thru C-8, 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 1 and the proposed use as large lot rural/residential, with the large remainder parcel (1720 acres) still in farm use, are compatible with the adjacent land uses as the existing residential density of the area will not be increased since the existing situation makes no use of the smaller parcel for agricultural purposes; these applications will in no way impact the future use of the larger parcel for farm uses. The status quo will not be affected. The Hearings Officer finds the change in status of an existing residence to a non-farm use will be compatible with the surrounding land use as no physical change or impact will result.

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

The surrounding 1720 acre property is found to be devoted to farm use. The designation of a non-farm residence will not interfere with the on-going use as sufficient lot area is provided, 64.7 acres, to provide a buffer/setback from agricultural management practices. Access is existing and will not impact agricultural operations.

The permit holder is required as a condition of this approval to file a restrictive 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 eliminate 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 commercial agriculture and will not be compromised by the conversion of an existing farm residence to a non-farm use. As previously stated, there is presently no agricultural use of the smaller parcel and the granting of these applications will not adversely impact any neighboring properties. The land use pattern of the area will not be modified and will be perpetuated by this action.

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 1785 acres in size. The Hearings Officer finds only a portion of this parcel is devoted to farm use. Parcel 1, containing the proposed non-farm use, is requested to be 64.7 acres in area. The Hearings Officer finds this parcel not suited to farm use due to its topography and soils and that it has not been used as such in the past.

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 parcel created for non-farm use will be 64.7 acres in size and is presently developed to residential and accessory building use. Area suited for the production of food/fiber is virtually nonexistent due to topographic and soils limitations.

2. Access to the parcel is from the West Langell Valley Rd.. This is a

county maintained paved road. The driveway servicing the smaller parcel is an owner-maintained, all-weather surface. Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of Merrill L. Nash for C.U.P. 79-89 and M.N.P. 39-89 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. 79-89 will not be effective until M.N.P. 39-89 is filed in the office of the County Clerk.
4. M.N.P. 39-89 must comply with Code requirements and agency conditions prior to filing.

DATED this 1st day of February, 1990

Richard C. Whitlock

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 1st day
of Feb. A.D., 19 90 at 3:49 o'clock P. M., and duly recorded in Vol. M90,
of Deeds on Page 2323.

FEE \$none

Evelyn Biehn County Clerk
By Pauline Mullendore

Return: Commissioners Journal