

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF MNP 2-90 FOR MARK STEELE
FOR A MINOR PARTITION IN CONJUNCTION WITH
AGRICULTURAL USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to partition property in conjunction with permitted uses in the Agricultural zones. The property contains 7085 acres and the request is to allow the division of the property into two parcels, one of 4495, and a second of 2590 acres.

This request was heard by the Hearings Officer February 23, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code section 51.018 E 1.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Richard C. Whitlock.

The applicant was present and offered testimony in support of the application. Numerous persons testified in opposition to the proposal if no conditions were placed on the use of the parcels. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Leanne Mitchel, Administrative Secretary. The Hearings Officer rules that witness Terry Dressel does have standing and that testimony is hereby received into the record.

3. LEGAL DESCRIPTION:

The subject property is located in portions Townships 40 south, Ranges 8 & 9 east, and 41 S R 8E, W.M.. Generally located north and south of Township Rd., east of Hwy 97. Lower Klamath Lake area.

4. RELEVANT FACTS:

The property is within the Agricultural plan designation and has an implementing zone of EFU-CG. The property is 7085 acres in size and is under Farm Deferral. Staff testimony and testimony of other witnesses indicate the property is presently cultivated and devoted to agricultural production.

A. ACCESS: The property is accessed by Township Rd., a county maintained paved road extending east from U.S. Hwy 97.

B. FIRE PROTECTION: The property is within Klamath County Fire District #4 and is approximately 10-11 miles from the project site. The response time to the site is 10-11 minutes. Additional residential development is not proposed by this application.

C. LAND USE: The property is a parcel of 7085 acres of agricultural property. The adjacent properties are found to be devoted to agricultural use in all compass directions and is located in a drained lake bed developed for agricultural use through the Klamath Project. The applicant acknowledges that he would like to see the use of parcel 2 as wildlife habitat, but that he only wants to sell the parcel to improve his financial position. Opponents testimony indicates substantial fears over future use of parcel 2 as "wetlands wildlife habitat".

D. SLOPE: Available topographic mapping indicates the property is essentially level with the exception of Skull Island, a natural projection located south of Township Rd., with a differential of only 78 feet over the surrounding farmland.

E. SOILS: The Soil Conservation Service mapping of the site indicates the property is within the Algoma and Tulana Silt Loam Soil Series. These series are rated as Class III w for Land Capability Classification. These soils and their specific properties are set out in the U.S.D.A. publication

SOIL SURVEY OF KLAMATH COUNTY, SOUTHERN PART, on file in the Planning Department. It is clear these soils are superior for agricultural uses.

F. IMPACT ON ADJACENT AGRICULTURAL USE: The testimony clearly established that if either of the two proposed parcels would be converted to "wetlands" wildlife habitat use, the following adverse impacts would result:

1. Possible legal problems might result from the use of Klamath Drainage District irrigation water for wildlife habitat as opposed to agricultural crops; The scope of these problems is unclear, but legal conflicts could arise in the Klamath River Compact, various contracts with the Bureau of Reclamation, surface water rights pursuant to permit from the State of Oregon, abandonment of water rights governed by O.R.S. 540.610, and other State and Federal rules and regulations;
2. An increase in rodents would result in significant increased damage to irrigation and drainage canal banks;
3. Standing water on the parcels for significant periods of time in the winter would result in significant increased damage to irrigation and drainage canal banks due to the "wave action" of that standing water;
4. Standing water on the parcels for significant periods of time in the winter would also result in significant increased ice damage to control gates in the irrigation system;
5. The introduction of significant numbers of waterfowl would result in 20% to 30% loss of agricultural production adjacent to the habitat areas due to the wildfowl roosting and feeding on those nearby crops;
6. Standing water would increase insect populations which would might result in damage to nearby agricultural crops and might facilitate the spread of disease among livestock and humans on nearby parcels; and
7. Wildlife habitat is traditionally not managed intensively and, therefore,

weed proliferation may be detrimental to adjacent properties.

The Hearings Officer specifically finds that all of these potential problems amount to a significant adverse impact upon adjacent and nearby agricultural lands. The Hearings Officer further notes that all witnesses were not opposed to this partition application provided the parcels would be utilized for agricultural use, and not "wetlands" wildlife habitat. The Hearings Officer also notes that the applicant himself acknowledged problems numbered 2-7 would result.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b,c & e-j, and all offered testimony show that the approval criteria as set out in the code has been satisfied.

A. The Hearings Officer finds this application conforms with the criteria set out in L.D.C. section 51.018 E as follows:

1. The proposed parcels are typical of the size of the surrounding existing commercial farm units. The land use in all compass directions is found to be similar in nature to the use of the subject property. Grazing and field crop production are the use of all properties in the area. These are permitted uses in the Agricultural zones. The proposed parcel sizes are consistent with the area and continued use, particularly in light of a Planning Commission decision on 8-22-89, granting a partition to the north of this application creating three (3) parcels of 1397, 1004, and 1385 acres.
2. The proposed parcels are of sufficient size to support the existing or potential commercial farm production. Surrounding farm units range in size from several hundred acres to several thousand. The average size required to remain commercially viable is about 750 acres according to testimony received in conjunction with MNP 24-89 in August, 1989. The Hearings Officer

finds this viability limitation reasonable. The parcel sizes proposed are above this threshold.

3. Additional findings as required by section 51.018 E include:

Each parcel proposed is sufficient in area to support the existing or potential commercial production of farm products when parcel size, soil classification, and typical yields are taken into consideration. Each parcel is large in size and consists of Class III type soils. The applicant provided a breakdown of the soil series found within the holding as follows:

Algoma silt loam- pasture, barley, alfalfa hay, and wheat, oats and potatoes
Tulana silt loam- barley, oats, cereal hay, pasture and potatoes.

The Hearings Officer finds the proposed parcels can be operated as viable commercial farm units.

B. The Hearings Officer finds that the use of either of these parcels as "wetlands" wildlife habitat would result in significant adverse impact upon nearby agricultural uses and, therefore, such uses would be contrary to "the intent of the agricultural land use policy adopted by the Legislative assembly in O.R.S. 214.243." However the imposition of conditions upon the approval of this partition will result in the partition meeting the intent of the agricultural land use policy of this state.

6. ORDER:

Therefore, it is ordered the request of Mark Steele for approval of M.N.P. 2-90 is approved subject to the following conditions:

1. Applicant must comply with agency conditions and code requirements prior to filing.

2. Applicant and any subsequent owner, purchaser or possessor shall not use the created parcels for any fish and wildlife management uses or wildlife habitat uses without further order of the Hearings Officer. It is

specifically intended that Applicant or his successor in interest may apply for a hearing to permit wildlife management and habitat uses wherein all the factual issues surrounding such uses may be fully examined.

DATED this 6th day of March, 1990

Richard C. Whitlock
Richard C. Whitlock, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Klamath County Board of Commissioners by filing with the Planning Department a Notice of Appeal as set out in Section 33.004 of the Code, together with the required fee within ten days of the date of mailing of this decision. The notice must be received by the Planning Department no later than 5:00 P.M. on the tenth day or next business day if the tenth day falls on a weekend or holiday. Failure to file a notice of appeal within the time provided will result in the loss of your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 8th day
of March A.D., 19 90 at 9:32 o'clock A.M., and duly recorded in Vol. M90
of Deeds on Page 4348.

FEE none

Evelyn Biehn, County Clerk
By Pauline Muelandere

Return: Commissioners Journal