

17330

Vol. 1790 Page 13610

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 25-90 AND MNP 7-90 FOR
BOBBY CHEYNE TO ESTABLISH THREE RESIDENCES
NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish three residences not in conjunction with farm use on 126 acres between Klamath Falls and Merrill, west of Hwy 39.

Also considered was the request to partition the property into three parcels of 61, 39, and 26 acres each.

This request was heard by the Hearings Officer June 29, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformity with Land Development Code Sections 51.017 D and E 1 b. and with O.R.S. 215.243.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neil D. Smith.

The applicant and Mr. Cheyne Sr., 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 Karen Burg, Administrative Secretary.

3. LEGAL DESCRIPTION:

The property under consideration is located in sections 7 & 12, T 40S R 9E W.M.. T.A. 4009-12-1000 & 1600, 4009-7-2900.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-C. The property is 126 acres in size and is not under farm tax deferral. Land use and lot sizes in the area are similar to that and smaller than that proposed by this application. Residential land use and similar lot sizes are also found within one mile of this project. Fire

1990 JUL 10 PM 3 31

protection is provided by the Klamath County Fire District No. 1 (approximately 5 to 6 miles away with a response time of 10 to 15 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 b 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 be marginally increased. The applicant has demonstrated the land under consideration here is no longer considered a commercial agricultural area and has submitted exhibits showing that the income, soil conditions and historical use as farmland has not proved profitable.

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

The surrounding parcels are found to be developed to low intensity agricultural uses, not economic farm units. The permitted non-farm residences will not interfere with the on-going use as sufficient lot area is provided to provide a buffer/setback from agricultural management practices and small private pasturage may be used to support limited large animal use for each lot.

The permit holder has proposed 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 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 part of this 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.

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 126 acres in size. The Hearings Officer finds this parcel size unsuitable for commercial agricultural use due to its small size and the testimony of the applicant stating a farm income suitable to support a family cannot be generated on this property. The impact of removing 126 acres of land from the County farmland base is found minimal. The three resulting parcels are divided by a county road, canals and a railroad which physically partition the parcels.

Partitions creating parcels for non-farm uses are reviewed per the criteria set out in L.D.C. section 51.017 E 1 b.

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

1. The parcels created for non-farm use will be 61, 39, and 26 acres in size and will be developed to residential and accessory building use. The land is not viable for commercial agriculture and have not been profitable in the past 30 years.

2. Access to the parcels is from Matney Rd.. 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 Bobby Cheyne for C.U.P. 25-90 and M.N.P. 7-90 is approved subject to the following conditions:

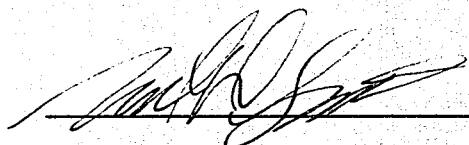
1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.
2. The Conditional Use Permit shall not be final nor shall a 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.

13614

3. C.U.P. 25-90 will not be effective until M.N.P. 7-90 is filed in the office of the County Clerk.

4. M.N.P. 7-90 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

DATED this 10th day of July, 1990



Neil D. Smith, 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 10th day of July A.D., 19 90 at 3:31 o'clock P M., and duly recorded in Vol. M90, of Deeds on Page 13610.

FEE None

EVELYN BLEHN County Clerk

By Bernetha J. Hetsch

Return to: Commissioners Journal