

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 46-90 AND MNP 26-90 FOR
S. & G. MILLER TO ESTABLISH A RESIDENCE
NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a residence not in conjunction with farm use on 68.6 acres in the Yonna Valley Area.

Also considered was the request to partition the parent property into two parcels, one of 68.6 and another of 160 acres.

This request was heard by the Hearings Officer, August 24, 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 Neil D. Smith.

The applicants representative, Reg LeQuieu, appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Karen Burg.

3. LEGAL DESCRIPTION:

The property under consideration is a large agricultural holding located within sections 23 and 26, T 38S R 11E W.M..

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The parent property is 228 acres in size and is under farm tax deferral. Land use and lot sizes to the west are similar to that proposed by this application. Agricultural land use and similar lot sizes are also found to the north and west of this project. To the south is an agricultural property devoted to the production of grass hay last year.

'90 AUG 27 PM 4 20

Fire protection is provided by the Bonanza Rural Fire District (approximately 5 miles away with a response time of 10 to 15 minutes.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b--, 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 parcels and the proposed use of parcel 2 as large lot rural/residential are compatible with the adjacent land uses as the existing residential density of the area will not be markedly increased. The applicant has demonstrated the predominant use of the area to the west of Bliss Rd. is not agricultural as it is 50% seasonal lake/marsh and is not agriculturally viable.

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

The Construction of a non-farm residence will not interfere with the on-going use as sufficient lot area is provided, 68.6 acres, to provide a buffer/setback from agricultural management practices.

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 operations.

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

The overall land use of the area is agriculture in nature. The 68.6 acre

property west of Bliss Rd. is not viable for agricultural use due to the seasonal lake/marsh and resultant poorly drained soil condition. The overall pattern of the area, agriculture, will not be impacted by the addition of a non-farm residence to the area as the property is already and has been devoted to non agricultural use by its topography and landform.

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 proposed parcel is 68.6 acres in size. The Hearings Officer finds this property west of Bliss Rd. unsuitable for commercial agricultural use due to its topography, landform, poor soils and lack of irrigation.

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 68.6 acres in size and will be developed to residential and accessory building use.
2. Access to the parcel is via a county maintained paved road south from Hwy 140. Use of these roads by one non-farm residence will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of Scott & Genie Miller for C.U.P. 46-90 and M.N.P. 26-90 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk

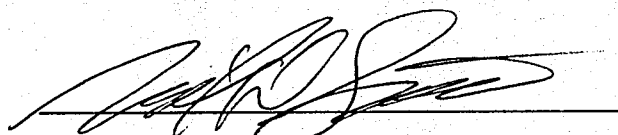
prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.

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.

3. C.U.P. 46-90 will not be effective until M.N.P. 26-90 is filed in the office of the County Clerk.

4. M.N.P. 26-90 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

DATED this 27th day of August, 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 27th day of Aug. A.D., 19 90 at 4:20 o'clock P. M., and duly recorded in Vol. M90, of Deeds on Page 17194.

FEE none

Evelyn Biehn - County Clerk

By Caroline Mullendar

Return: Commissioners Journal