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BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 55-90 AND MNP 32-90 FOR
STURGEON 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 1.5 acres south of Klamath Falls and west of Kingsley Field.

Also considered was the request to partition the parent property into two parcels of 1.5 and 120.3 acres each.

This request was heard by the Hearings Officer October 5, 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 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, Administrative Secretary.

3. LEGAL DESCRIPTION:

The property under consideration is located in section 20, T 39S R 9E W.M..

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-C. The parent property is 121.8 acres in size and is 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 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-e, and offered testi-

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mony show that the approval criteria as set out in Code section 51.017 D and 11.1 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 rural/residential are compatible with the adjacent land uses as the existing residential density of the area will not be increased as a residential use already exists. The applicant has demonstrated the land under consideration here is no longer considered a commercial agricultural parcel due to its small size (1.5 acres).

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

The parcels to the south and west are found to be developed to agricultural uses and are economic farm units. The permitted non-farm residence will not interfere with the on-going use as sufficient lot area is provided 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 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, mobilehome park and commercial farming. This will not be compromised by the conversion of an existing "worker residential" residence to a non-farm use. The land use pattern of the area will not be modified.

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 1.5 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 1.5 acres of land from the County farmland base is found minimal.

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 parcel created for non-farm use will be 1.5 acres in size and will remain 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 parcel is from Tingley Ln.. This is a state maintained paved road. Use of the road will not interfere with farm practices. A legal approach permit has been obtained thereby satisfying the letter dated 9-24-90 from the State Highway Division.

G. ORDER:

Therefore, it is ordered the request of Harold Sturgeon for C.U.P. 55-90 and M.N.P. 32-90 is approved subject to the following conditions:

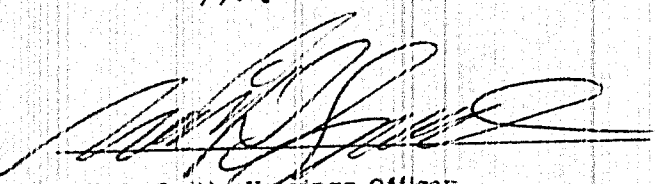
1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.
2. The Conditional Use Permit shall not be final nor shall a 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. 55-90 will not be effective until M.N.P. 32-90 is filed in the office of the County Clerk.

4. M.N.P. 32-90 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

DATED this 9th day of October, 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 9th day
of Oct. A.D., 19 90 at 4:40 o'clock P.M., and duly recorded in Vol. M90,
of Deeds on Page 20444.

FEE none

Evelyn Biehn - County Clerk
By Pauline Mullendore

Return: Commissioners Journal