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BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 81-91 AND MNP 68-91 FOR ED BRITTON TO ESTABLISH TWO RESIDENCES NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish two residences not in conjunction with farm use on the east shore of Agency Lake, north of Klamath Falls. Also considered was the request to partition the parent 4.5 acre property into two parcels of 2.0 and 2.5 acres each.

This request was heard by the Hearings Officer January 24, 1992 pursuant to Ordinances 44 and 45. The request was reviewed for conformity with Land Development Code Article 54 and with O.R.S. 215.243.

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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 the NW 1/4 Sec. 31 T 34S R 7E, T.A. 3407-31-1001

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG (80 acre minimum). The parent property is 4.5 acres in size and is NOT under farm tax deferral. Land use and lot sizes in the area are similar to 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 Chiloquin/Agency Lake RFD (approximately 2 miles away with a response time of 10 to 15 minutes).

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-d, and offered testimony show that the approval criteria as set out in Code Article 54 and 45 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 minimally increased. The applicant has demonstrated the small parcels, 2.5 and 2.0 acres, under consideration here is not considered a commercial agricultural parcel size due to their small size.

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 and rural residential use, not large economic farm units. The permitted non-farm residence will not interfere with the on-going use as sufficient lot area and geographic boundaries provide a buffer/setback from agricultural management practices and small private pasturage may be used to support limited large animal use for the parcels.

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 nearby cent 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 low intensity commercial farming. 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 parcels are 2.0 and 2.5 acres in size. The Hearings Officer finds the parent parcel size unsuitable for commercial agricultural use due to its small size, location on the east shore of Agency Lake and subsequent riparian setbacks and the testimony of the applicant stating a farm income suitable to support a family cannot be generated on this property.

Partitions creating parcels for non-farm uses are reviewed per the criteria set out in L.D.C. Article 45 and section 54.070.

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

1. The parcels created for non-farm use will be 2.0 and 2.5 acres in size and is developed to residential and accessory building use. The land is not viable for commercial agriculture since it is less than 80 acres.

2. Access to the parcel is from Modoc Point Rd., a county maintained paved road. Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of Ed Britton for C.U.P. 81-91 and M.N.P. 68-91 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. 81-91 will not be effective until M.N.P. 68-91 is filed in the office of the County Clerk.

4. M.N.P. 68-91 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

DATED this 24th day of January, 1992

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 seven 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 Jan. A.D., 19 92 at 2:12 o'clock P M., and duly recorded in Vol. M92, of Deeds on Page 1677.

Evelyn Biehn, County Clerk
By Darlene Millendrie

FEE none

Return: Commissioners Journal