

IN THE MATTER OF CUP 82-91 FOR VOGL
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 35 +/- acres north of the Stateline Hwy, 1 1/4 miles west of the intersection with the Merrill Pit Rd.. 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 Sections 54.060 and O.R.S. 215.243.

2. NAMES OF THOSE WHO PARTICIPATED:

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

The Vogls representative, Bill Kalita, 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 SW 1/4 section 16, T 40S R 10E W.M.. TA 4110-16C-500.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-C. The property fronts Hwy 161 to the south, is 34.83 acres in size and is not under farm tax deferral.

Direct access to the property is proposed on the east side of the property provided by a user maintained road.

The property has not been evaluated for subsurface sewage disposal capability. However that issue is not before the Hearings Officer at this time.

The Land Use Capability Classification of the property is Class VI.

The properties adjacent to this property to the west and north are commercial agricultural operations. The property to the south is the USFWS game refuge. Property to the east is vacant.

The property itself has not been utilized for agriculture due to poor soils conditions and an alkali lake bed encumbering 11 acres of the property.

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 section 54.060 and O.R.S. 215.243 have been satisfied. The Hearings Officer finds this application;

1. Is compatible with farm use because:

The project site is legally and ownership divided from adjacent properties. The project site is found not to be devoted to commercial agricultural use and the conversion to such would be impractical because of the parcel size and unsuitable soil conditions.

The Hearings Officer finds that the use of the remnant parcel as a homesite compatible with potential agricultural use because the applicant has demonstrated that no conflict will result from the conversion of this 35 +/- acre property from vacant to residential use. Historically, there has been no agricultural use of the property. The applicants stated intent is to improve and maintain the property as a wildlife refuge, which is the current use of the property controlled by the USFWS to the south.

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

The properties to the west and south are found NOT to be engaged in commercial agriculture and are devoted to wildlife management practices. The State Line Hwy is the south property boundary.

The property in question is found to be of little resource value due to its location, topography, soils limitations and size which is far below the minimum size determined as a commercial agricultural parcel.

The permit holder has volunteered 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 reasonable farming practices on adjacent lands.

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

The overall land use of the area is long established to agriculture/open space/game refuge and this use will not be compromised by the conversion of an adjacent parcel to a non-farm use. The land use pattern of the area will not be modified and will be perpetuated by this permit.

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 35 +/- acres in size. The Hearings Officer finds this parcel size unsuitable for commercial agricultural use due to its size, poor soils, micro-climate and topography. The impact of removing this marginal value land from the County farmland base is found to be insignificant. Its use as a wildlife refuge will enhance the present use of adjacent properties as a wildlife refuge.

5. Complies with other conditions felt necessary, because;

The property is not within a structural fire protection district. The potential exists that a new residential use could cause a structural fire spreads to adjacent lands. Accordingly, the Hearings Officer finds the requirements set out in L.D.C. will protect the resource land base that could result from any possible fire hazard posed by the non-farm residence.

6. ORDER:

Therefore, it is ordered the request of Vogl for C.U.P. 82-91 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 and prohibiting the further division of the property.
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. The land shall be used as wildlife habitat and no further commercial use shall be permitted without application to the Planning Department.

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 Article 33 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 1681.

FEE none

Evelyn Biehn, County Clerk

By Dan M. Mendenhall

Return: Commissioners Journal