

IN THE MATTER OF CUP 8-92 AND LP 2-92 FOR
WIRTH TO ESTABLISH THREE RESIDENCES
NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish two residences and an existing residences not in conjunction with farm use on the west side of Hwy 97 at the Williamson River Bridge.

Also considered was the request to partition the parent 60 acre property into equal parcels of 20 acres each.

This request was heard by the Hearings Officer March 6, 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.

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 sections 20 & 21 T 35S R 7E

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The parent property is 60 acres in size and is 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 5 miles away with a response time of 20 to 25 minutes).

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-e, 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 and commercial use 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, under consideration here is not considered a commercial agricultural parcel size due to their size being less than the 80 acre required minimum.

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, rural residential use and commercial enterprises, not large economic farm units. The proposed non-farm residences will not interfere with the on-going uses 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 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 part of this area is found to be large lot rural residential, commercial, and low intensity "hobby" 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 parent parcel (60 acres) is already are much less than 80 acres in size as required by the existing zoning. The Hearings Officer finds this parcel size unsuitable for commercial agricultural use due to its size, location on and subsequent practical problems 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 60 acres in total 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. 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 20 acres each in in size and are/will be 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 Crawford Way, a county dedicated, but not constructed road. Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of the Wirth Family Trust for C.U.P. 8-92 and LP 2-92 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. 8-92 will not be effective until L.P. 2-92 is filed in the office of the County Clerk.

4. L.P. 2-92 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

5. The applicant shall comply with the Division of State Lands letter dated February 18, 1992.

DATED this 9th day of March, 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 10th day of March A.D., 19 92 at 2:10 o'clock PM., and duly recorded in Vol. M92, of Deeds on Page 5014.

FEE none

Evelyn Biehn County Clerk

By Carolee Mustard

Return: Commissioners Journal