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BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 52-92 FOR MORGADO 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 10 acres south of the Williamson River Hwy, four miles east of the junction with the Sprague River Hwy. The hearing was conducted JULY 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 Nell 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 a portion of the NW 1/4 section 23, Township 34S Range 8E W.M.. T.A. 3408-23-1100.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The property fronts an easement road extending 1/8 mile south from the Williamson River Rd., is 10 acres in size and is not under farm tax deferral. The property has NOT been evaluated for subsurface sewage feasibility. The Land Use Capability Classification of the property is Class IV.

The properties adjacent to this property to the north and south are found NOT devoted to commercial agricultural production. The zoning is the same as the subject property, EFU-CG.

Surrounding residential use includes fifteen homes within a two-mile radius. The property is within a structural fire protection district, and the pro posed dwelling will be within a response time of 15-20 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 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. 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 10.0 acre property to residential use. Historically, there has been no agricultural use of the property.

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

The properties to the south and nort are found NOT to be engaged in commercial agriculture. These properties are found devoted to rural lifestyle homes on equivalent area parcels. 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 lot size (80 acres) thought to represent a viable agricultural property.

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 rural/agriculture lifestyle and 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 10.0 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.

5. Complies with other conditions felt necessary, because;

The property is within a structural fire protection district. The potential exists that a new residential use could cause a structural fire to spread to adjacent lands. Accordingly, the Hearings Officer finds the requirements set out in L.D.C. in concert with the structural fire protection provided by the Fire District, will protect the resource land base that could result from any possible fire hazard posed by the non-farm residence.

6. <u>ORDER:</u>

Therefore, it is ordered the request of MORGADA for C.U.P. 52-92 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. This permit will expire in two years unless the approved residence is established or a request for an extension of time is filed with the Planning Department.

DATED this 24th day of JULY, 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 July A.D., 19 92 at 3:57 o'clock P M., and duly recorded in Vol. M92, of Deeds on Page 16582.

Evelyn Biehn County Clerk

FEE none By

Return: Commissioners Journal