

In the matter of the request)
)
 of DONALD & SUZANNE LeBEAU)
) LAND PARTITION
) LP NO. 41-92
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This matter came before Neil D. Smith, Hearings Officer for Klamath County, Oregon on 4 September 1992 in the County Commissioners' Meeting Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Kim Lundahl, Senior Planner the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related Statutes and Ordinances. The applicant for the above referenced Conditional Use Permit, was not present and did not testify. Mr. Bradford Aspell Esq. appeared in behalf of the applicants and provided information, exhibits and arguments in their behalf. All exhibits offered were received and arguments are of record.

There were objections written and received from the Oregon Department of Land Conversation and Development, and by reference from the Oregon Department of Forestry. Both agencies' objections are made part of the record.

FINDINGS OF FACT

1. The application submitted by the LeBeaus was signed on the 8th of June 1992 and reviewed by the Planning Department on the 22nd of July 1992.

2. The Applicant's requested Partition is to divide 40 acres from a parcel containing 157 acres more or less.

3. This parcel is part of other parcels which were purchased and merged to make up the above referenced 157 acre parcel.

4. A roadway was deeded to the U.S. Department of Interior in December 1976.

5. Mr. LeBeau had initiated an application regarding this proposed partition in case No. 39-90 which application was withdrawn on 2 February 1990. He had attempted to have

the roadway dedicated and accepted again by the Department of Interior since that date, with no documented results to date.

CONCLUSIONS

1. The application herein was made after 3 August 1992 and therefor must be regulated under the Code in effect on that date.

2. The applicant asks to divide 40 acres from a parcel containing 157 acres. The present Code Chapter 55 Section 090 (A)(1) which relates to "LAND DIVISIONS" is unequivocal and plain on its face. "The parcel size shall be no less than 80 acres;" (emphases added) This first criteria is not met.

3. The fact that several parcels were purchased and made part of the 157 acre parcel here has no relevance since they are merged and made one once the single owner gains title to the properties.

4. The dedication of a roadway does not constitute a partition of land. The applicant cites statutes in effect at the time of the purchase (Chapter 809 OREGON LAWS 1977) which is silent on the issue of the dedication of roadways NOT constituting a partition of land which is now the case under ORS 92.010 (7)(c) presently in effect.

5. Even though the applicant apparently attempted to have the roadway taken by the Department of Interior, BLM since his withdrawal of his prior application there is no authority that these acts would authorize the Hearings Officer to ignore the present Code requirements.

ORDER

Based upon the findings and conclusions herein the Application for Partition No. 41-92 is DENIED.

DATED this 10th day of September 1992



Neil D. Smith, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code."

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 11th day of Sept. A.D., 19 92 at 2:44 o'clock P. M., and duly recorded in Vol. M92, of Deeds on Page 20818.

FEE none

Evelyn Biehn, County Clerk

By David M. McElroy

Return: Commissioners Journal