

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 2-93 AND LP 4-93 FOR
HAGERTY TO ESTABLISH AN EXISTING RESIDENCE
NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish an existing as not in conjunction with farm use property east of Harpold Rd., 2 1/2 miles north of the Malin-Merrill Hwy.

Also considered was the request to partition the parent 39 acre property into parcels of 8.1 and 39 acres each.

This request was heard by the Hearings Officer MARCH 5, 1993 for compliance 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 Michael L. Brant. 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. PROJECT LOCATION:

The property under consideration is located in a portion of the NW 1/4 NW 1/4 Sec. 5 T 41S R 12E.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-C. The parent property is 39 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 as evidenced by the Study (ex. f) submitted by the applicant. Agricultural land use and

similar lot sizes are also found within one mile of this project. Fire protection is provided by the Malin RFD, six miles away with a response time of 10 minutes.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-f, 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 parcels and the proposed use as large lot rural/residential/commercial farm are compatible with the predominant adjacent land uses as the existing residential density of the area will be minimally increased. The applicant has demonstrated the smaller of the parcels under consideration here is not considered a commercial agricultural parcel size due to its 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 rural residential and commercial farm use. 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 parcel.

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 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 non farm parcel is 8.1 acres in size, with a 39 acre farm parcel remainder. The Hearings Officer finds this non farm parcel size unsuitable for commercial agricultural use due to its small size, location adjacent to developed residential use east of Klamath Falls 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 parcel created for non-farm use IS developed to residential and accessory building use. The land is not viable for commercial agriculture since it is less than 31 acres.

2. Access to the parcel is from Harpold 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 Claude Hagerty for C.U.P.

2-93 and L.P. 4-93 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. No later than 30 days following the date below, the applicant shall provide the Planning Department with evidence that the lot or parcel upon which the existing 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. 2-93 will not be effective until L.P. 4-93 is filed in the office of the County Clerk and will expire two years after the date of recording unless an extension of time is filed.
4. L.P. 4-93 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.
5. L.P. 4-93 will expire in one year from the date below unless the map is recorded or an extension of time is filed.

DATED this 5th day of MARCH, 1993

Michael L. Brant

Michael L. Brant, 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 9th day of March A.D., 19 93 at 11:29 o'clock A. M., and duly recorded in Vol. M93 of Deeds on Page 4904.

FEE none

Evelyn Biehn, County Clerk

By *Evelyn Biehn*

Return: Commissioners Journal