

BEFORE THE BOARD OF COMMISSIONERS
KLAMATH COUNTY OREGON

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| In the Matter of the Appeal |) | CUP No. 78-92 |
| of the Conditional Use Permit |) | |
| for Bernard L. Simonsen |) | ORDER |

I. NATURE OF THE APPEAL:

The application for a Conditional Use Permit by Bernard L. Simonsen to establish a livestock sales facility was heard by the Hearings Officer on November 6, 1992 and February 5, 1993 and on February 19, 1993 an Order denying the request was entered by the Hearings Officer. The Applicant filed an appeal of the Order on March 1, 1993. The Board of Commissioners heard the appeal on April 8, 1993 and entered an Order on April 19, 1993 remanding the matter to the Hearings Officer for further consideration. The Hearings Officer held further hearings on May 14, 1993 and entered his Order granting the Conditional Use Permit on May 25, 1993. This Order was appealed by Michael L. Spencer representing Clyde Collins and Golf Resources, Inc. The hearing on the appeal was heard on June 30 1993 before the Board of Commissioners of Klamath County, Oregon.

II. NAMES OF THOSE WHO PARTICIPATED:

Commissioners Edwin D. Kentner, Wesley E. Sine and F. Jean Elzner were present. Michael L. Spencer appeared on behalf of the appellants, Clyde Collins and Golf Resources, Inc. The applicant, Bernard Simonsen, appeared on his own behalf. Kim Lundahl, Klamath

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County Senior Planner, was present on behalf of Klamath County Planning Department. Rod Davis, Klamath County Counsel, was present. The Recording Secretary was Karen Burg.

III. PROPERTY DESCRIPTION AND LOCATION:

The subject property is a 17.6 acre parcel located at 9390 Highway 140 East approximately 1½ miles east of the Highway 39 junction and approximately 5½ miles east of Klamath Falls in Klamath County, Oregon, more particularly described as:

A portion of the Northwest ¼ Southwest ¼, Section 8, Township 39 South, Range 10 East of the Willamette Meridian.

Tax Account No. 3910-8C-500

The subject property is outside of the Urban Growth Boundary.

IV. RELEVANT FACTS AND CRITERIA:

The application of Bernard L. Simonsen was for a Conditional Use Permit to conduct animal sales upon the subject property. The subject property is zoned as EFU-C. The Purpose of the EFU zone is set forth in Section 54.010 which provides in part "...the Exclusive Farm Use zones are intended to guarantee the preservation and maintenance of those areas so classified for farm use, free from conflicting non-farm uses and influences." Section 54.010 further states "...Exclusive Farm Use-Cropland zone is applied to agricultural areas characterized by row crop, hay and livestock production in which there is no predominant parcel size." Section 54.030 C. of the Klamath County Land Development Code provides that

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stockyards and animal sales may be a conditional use of an EFU-C zone. All other abutting property and the surrounding area south of Highway 140 is zoned as EFU-C. The surrounding area on the north of Highway 140 is predominately EFU-C with the exception of several small lots which are zoned as Rural Residential and the Shield Crest Golf Course which is a non-conforming use in a Rural Residential zone. (The Shield Crest Golf Course was previously zoned as a Planned Unit Development, until that zoning was deleted from the Klamath County Land Development Code. The Klamath County Land Development Code allows golf courses in the Recreational Commercial zone as a permitted use and in the Exclusive Farm Use zone as a conditional use.) The subject property abuts a state highway and is subject to Section 71.020 C. of the Klamath County Land Development Code. The criteria for a conditional use permit in an EFU zone is found in Section 54.040 of the Klamath County Land Development Code. The procedure for the granting of a Conditional Use Permit, but not the criteria, is found in Article 44 of the Klamath County Land Development Code.

The Conditional Use Criteria set forth in Section 54.040 is as follows:

- "A. The use complies with policies of the Comprehensive Plan;*
- "B. The use is in conformance with all other required standards and criteria of this code;*
- "C. The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting*

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properties and the surrounding area;

"D. The use will not force a significant change in accepted farm or forest practices or surrounding lands devoted to farm or forest use;

"E. The use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

The standards concerning vehicular access and circulation are set forth in Section 71.020 C. of the Klamath County Land Development Code. Highway 140 is a State Highway and access is subject to the permits issued by the State Highway Division.

V. FINDINGS OF FACT:

The Board has considered the staff reports, the exhibits and the testimony offered in the proceedings before the Hearings Officer and makes the following Findings of Fact:

A. General Findings. The Applicant has made an application for a Conditional Use Permit to hold sales of pure breed registered cattle upon the subject property. The proposal would limit the number of sales to six in one calendar year with a maximum of 100 cattle per sale. The Applicant has a 6800 square foot enclosed facility which adjoins his dwelling house in which to hold the sales. Sales of this nature would be of interest to breeders and not to commercial cattle buyers. Sales of this nature are generally held in high level facilities such as hotel ballrooms, urban convention facilities and family mansions. The sales are conducted

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with live animals or with videos and television satellite transmissions of the sales activities. Social events for the participating breeders and buyers are often a part of the endeavor.

B. Compliance with the Policies of the Comprehensive Plan.

The proposed Conditional Use Permit is not in contravention of any of the policies of the Comprehensive Land Use Plan of Klamath County, Oregon. The stated objective of the Comprehensive Plan concerning Goal 3: Agricultural Lands is "Economically stabilize the agricultural community in Klamath County." The general policy of Goal 3: Agricultural Lands is to preserve agricultural lands. A stated policy of Goal 9: County Economy is "The County shall encourage the development of local markets for local agricultural produce." There now exists cattle auction and sales yards for commercial cattle in Klamath County, however such facilities are not appropriate for the sale of high quality registered cattle for those who are interested in improving the species. The Simonsen facility will encourage local cattle to expand to the breeding and raising of registered cattle and will create a local market for the sale of registered cattle. The purchasers of these cattle will be generally from outside of Klamath County and will require motel, restaurant and shopping facilities during their stay in Klamath County.

C. Conformance with Standards and Criteria of Code. The

proposed use is not in contravention of any standard or criteria of the Klamath County Land Development Code. The subject property is in a EFU-C zone and the proposed use is allowed as a conditional

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use in the EFU-C zone. The proposed use is subject to the provisions of Article 71 of the Klamath County Land Development Code concerning access. Highway 140 has a traffic count of 6000 trips per day. The subject property on the peak traffic day of the sale would generate a maximum of 150 trips. The subject property has access to the State Highway at this time, however, with a change in the use it will be necessary for the Applicant to obtain an access permit from the State Highway Division. The State Highway Division has set forth several alternatives for the Applicant to chose from. The use should be conditioned upon the Applicant obtaining an access permit from the State Highway Division pursuant to Section 71.020 C. of the Klamath County Land Development Code.

D. Significant Adverse Impact. The following Findings are made concerning the significant adverse impact on the livability, value or appropriate development of the abutting properties and the surrounding area:

1. Location. The subject property is located outside of the Urban Growth Boundary and is situated on a State Highway east of Klamath Falls, Oregon. The subject property and the surrounding properties are EFU-C except for Shield Crest Golf Course which is a non-conforming use in a Rural Residential zone. Each of the surrounding area parcels except for the Shield Crest Golf Course is utilized for cattle grazing and one parcel is utilized as a poultry farm. The Clyde Collins property which abuts on the west currently has 20-25 head of cattle and some horses. The Baker property abutting on the south currently has 50-75 head of cattle.

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The carrying capacity of the Simonsen property without consideration of the Conditional Use Permit would be 20-25 cattle for grazing purposes and 25-50 cattle in a feeding operation. The Applicant owns a 10,000 acre ranch near Bly, Oregon which is approximately 50 miles to the east of the subject property upon which he raises both commercial cattle and registered cattle, which would minimize the transportation cost of moving the registered cattle to the subject property. The high quality sales facility is dependent upon motel, restaurant and shopping facilities, which are located five miles west of the subject property in Klamath Falls.

2. Size and Design. The subject property is 17.6 acres and the structure that would house the sales facility is 6800 square feet. In a continuous feeding operation the property could carry up to 50 head of cattle as a permitted use. The cattle pens would be located to the rear of the sales facility, away from the State Highway and the parking would be largely in the front of the sales facility. The sales facility is attached to the dwelling house and is of the same construction and quality as the dwelling house. The dwelling house is one of the finer homes in Klamath County, which would add to the prestige of the sale. The subject property is adequate to hold 100 cattle for short durations. To insure that the size and design of the subject property and sales facility are adequate, a limit of 100 cattle per sale, and a limit of four sales per year with no more than one sale in each 90 day increment should be instituted.

3. Operating Characteristics. The cattle would be moved

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upon the property prior to the sale and the maximum number of 100 cattle, that can be held upon the property, can be moved in two loads. The cattle would require a maximum of five tons of hay for feed for each sale, which can be hauled to the property in two pickup loads or one feed truck load. The participating breeder-buyers would most probably be transported from their motels to the subject property and sales facility as an added enhancement to the quality of the sale. The pure bred registered cattle are often transported and displayed and are accustomed to handling, which makes them suitable for sales in hotel and quality home facilities. To insure that the noise of the cattle will be minimized, the sale animals should only be delivered and removed from the sale site between the hours of 7:00 A.M. through 7:00 P.M., and the sale animals may not be held more than four days prior to and after the sale. The Simonsen's have a vested interest in seeing that the manure is removed from the sale facility to the Bly ranch due to the proximity of their dwelling house, however, to insure that there will be no odors created by the use, the manure generated by each sale event will be removed within five days following the sale.

E. Significant Change in Accepted Farm Practices. The surrounding lands, which are devoted to farm use, are used as pasturage for cattle and horses, the raising of alfalfa and a poultry farm. The cattle raised on the surrounding lands are commercial cattle and not registered cattle and therefore will not be subject to inclusion in the sales facility. The commercial sales

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yard will be unaffected by the establishment of a registered cattle sales facility in that the commercial sales yards do not sell registered cattle on any regular basis and it is unlawful for the commercial sales yards to sell cattle by video or television satellite methods. The support for the maintenance of the registered cattle concerning feed, transportation and removal of manure will be made from the Bly ranch and therefore will not force a significant change in the farming practices of the surrounding lands.

F. Significant Increase in Cost of Accepted Farm Practices.

The surrounding lands devoted to farm use will be unaffected by the proposed use and consequently will not experience an increase in cost of farm practices.

VI. CONCLUSIONS:

A. The proposed use of the subject property, which is zoned as EFU-C, as an animal sales facility is a conditional use of the EFU-C zone.

B. The proposed use complies with the policies of the Comprehensive Land Use Plan of Klamath County.

C. The proposed use is in conformance with all other required standards and criteria of the Klamath County Land Development Code, except the requirements of Article 71, which requirements may be met at a future time and will be a condition of this Order.

D. Subject to the conditions of this Order the location, size, design, and operating characteristics of the proposed use

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will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area.

E. The proposed use will not force a significant change in accepted farm or forest practices or surrounding lands devoted to farm or forest use.

F. The proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

VII. ORDER:

Based upon the findings and conclusions herein Conditional Use Permit No. 78-92 for Bernard L. Simonsen is approved subject to the following conditions:

1. The Applicant comply with the requirements of Klamath County Land Development Code Sections 71.010 and 71.020 C. requiring approval of the State Highway Division for access to Highway 140.
2. There will be no more than one sale in each 90 day time increment with a maximum of four sales per calendar year.
3. There will be no more than 100 animals offered at each sale.
4. Sale cattle will not be held more than a total of four days prior to and after the sale.
5. Sale animals may only be delivered or removed from the sale site between the hours of 7:00 A.M. through 7:00 P.M.

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6. Manure generated by each sale event will be removed within five days following the sale.

DATED: 8/24, 1993

Edwin D. Kentner
EDWIN D. KENTNER, Commissioner

DATED: _____, 1993

Wesley E. Sine
WESLEY E. SINE, Commissioner

DATED: _____, 1993

F. Jean Elzner
F. JEAN ELZNER, Commissioner

APPROVED AS TO FORM AND CONTENT:

DATED: _____, 1993

Rod Davis
ROD DAVIS
Klamath County Counsel

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Land Use Board of Appeals within 21 days following the date of the mailing. Contact the Klamath County Planning Department for more information regarding this procedure. Failure to appeal within the time provided will result in the loss of your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 25th day of Aug. A.D., 19 93 at 2:03 o'clock P M., and duly recorded in Vol. M93 of Deeds on Page 21357.

FEE none

Return: Commissioners Journal

Evelyn Biehn County Clerk

By Pauline Mullins