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BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 83-93 AND LP 66-93 FOR
SPECIALE TO ESTABLISH AN EXISTING RESIDENCE AS
NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish an existing residence as a use not in conjunction with farm use on property east of the Midland Rest Stop, south and east of Midland.

Also considered was the request to partition the parent 90 acre property into parcels of 88 and 1.56 acres each.

This request was heard by the Hearings Officer FEBRUARY 4, 1994 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 Michael L. Brant.

The applicants representative 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 portions of sections 31 and 36 T 39S R 9E W.M..

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-C. The parent property is 90 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 Fire District #1, 6.5 miles away with a response time of 15

minutes.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-g, 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 not be increased. The applicant has demonstrated the smaller parcel (1.56 acres) 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 existing 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 as the residential intensity will not be increased.

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 substantially smaller than the 80 acre size required by HB 3661 and are therefore thought not appropriate for commercial farm use. Hearings Officer finds this non farm parcel size unsuitable for commercial agricultural use due to its small size, location adjacent to developed residential use at Midland 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 will continue to be devoted to large lot rural 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 Old Midland 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 SPECIALE for C.U.P. 83-93 and L.P. 66-93 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. L.P. 66-93 shall not be filed 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 Parcel 2, (1.56 acres) 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. 83-93 will not be effective until L.P. 66-93 is filed in the office of the County Clerk.

4. L.P. 66-93 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

5. L.P. 66-93 will expire in one year from the date below unless the map is recorded or an extension of time is filed.

DATED this 4th day of FEBRUARY, 1994

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.

REQUIREMENTS FOR FINAL APPROVALPartition No. LP 66-93/Special

NOTE: THIS APPLICATION WILL EXPIRE ONE YEAR FROM THE PRELIMINARY APPROVAL DATE IF A TIME EXTENSION APPLICATION IS NOT MADE PRIOR TO THAT DATE.

FINAL PLAT REQUIREMENTS (Per Section 45.110 of the Land Development Code)

- A. Original Drawing - The original drawing of a partition plat shall be made in permanent black India type ink on 7 mil mylar, 18 inches by 24 inches in size with an additional 3 inch binding edge on the left side. The plat shall be of such a scale as required by the County Surveyor. The lettering of the approvals, the affidavit of the surveyor and all other information shall be of such a size or type as will be clearly legible, but no part shall come nearer any edge of the sheet than 1 inch. The original drawing shall be recorded in the County Clerk's office.
- B. Copy - One exact copy of the original plat made in permanent black India type ink or silver halide permanent photocopy on minimum 4 mil mylar, 18 inches by 24 inches in size shall be submitted to the Planning Director along with the original plat.
- C. Information shown on Plat:
 1. The partition number.
 2. The name of the person for whom the partition was made.
 3. Signature Blocks for the following:
 - a. Planning Director;
 - b. County Surveyor;
 - c. County Public Works Director (if applicable);
 - d. County Clerk;
 - e. Owner and contract purchaser of the subject property (if applicable).
 4. All requirements of ORS 92.050, 92.070(1), and ORS 209.250 where applicable.
 5. Street names adjacent to the partition.
 6. Water rights recording number. If a water right is not appurtenant to the property, a statement signed by the owner indicating such shall be shown on the plat.
- D. Supplemental Information to be filed with the Final Plat:
 1. A preliminary title report or partition guarantee issued by a title company in the name of the owner of the land and prepared within 30 days prior to submittal of the final plat showing all parties having any record title interest in the premises and what interest they have.
 2. A completed water rights statement if a water right is appurtenant to the property.

OTHER REQUIREMENTS:

1. Parcel 2 must be surveyed and monumented.
2. Land Partition 66-93 shall not be filed 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 Parcel 2 (1.56 acres) 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 9th day
of Feb A.D., 19 94 at 9:15 o'clock AM., and duly recorded in Vol. M94
of Deeds on Page 4477

FEE none

Return: Commissioners Journal

Evelyn Biehn - County Clerk

By Evelyn Biehn