

04-07-94A09:13 RCVD

BEFORE THE HEARINGS OFFICER  
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 18-94 AND LP 15-94 FOR  
GORDON BEASLY TO ESTABLISH AN PROPOSED HOME AS A USE  
NOT IN CONJUNCTION WITH FARM USE  
AND DIVIDE THE PROPERTY

ORDER

## 1. NATURE OF THE REQUEST:

The applicant wishes to establish a residence as a use not in conjunction with farm use on property two miles north and west of Merrill on Buesing Rd..

Also considered was the request to partition the parent 127.5 acre property into parcels of 2.0 and 125.5 acres each.

This request was heard by the Hearings Officer APRIL 1, 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 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. LOCATION:

The property under consideration is located at the northeast corner of Buesing and Chin Rds., north and west of Merrill.

## 4. RELEVANT FACTS:

Parcels 1 & 2 are within the Agriculture plan designation and have an implementing zone of EFU-C. The parent property is 127.5 acres in size and is under farm tax deferral. The LCC rating of the agricultural properties is SCS Class III (LAKI Soil Series). This series and its characteristics are set out in the SCS publication SOIL SURVEY OF KLAMATH COUNTY, SOUTHERN PART.

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 the Merrill RFD, 3 miles away with a response time of 10 mins.

#### 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 have 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 is compatible with the predominant adjacent land uses. There are many existing parcels approximate to the smallest size proposed, 2 acres.

##### 2. The use proposed would not interfere seriously with accepted farming practices on adjacent lands devoted to farm use because:

The surrounding parcels are found to be developed to commercial farm use. The proposed 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 is available.

The permit holder has proposed as a condition of approval to file a restrictive covenant which will prohibit the permit holders and successors in interest from filing complaint concerning valid farming practices on nearby lands. The Hearings Officer finds this will mitigate impact to the farm operation.

##### 3. The use proposed, a non-farm residence, would 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 commercial farming with many smaller parcels already existing in the area. A new non-farm residence would not introduce conflicting land uses.

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. The Hearings Officer finds this non farm parcel size is suitable for division as it would create a parcel in conformance with nearby/existing surrounding parcel sizes.

Partitions creating parcels for non-farm uses are reviewed per the criteria set out in LDC Article 45 and Section 54.070.

The Hearings Officer finds this partition conforms to these criteria as set out below:

1. The parcels created for non farm use will be devoted to large lot rural residential and accessory building use. The small parcel is thought not viable for commercial agriculture since it is less than 80 acres.
2. Access to the property is from Buesing Rd., a county maintained paved road. Non farm use of this road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of BEASLY for CUP 18-94 and LP 15-94 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. LP 15-94 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 the property 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. CUP 18-94 will not be effective until LP 15-94 is filed in the office of the County Clerk.
4. LP 15-94 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.
5. LP 15-94 will expire in one year from the date below unless the map is recorded or an extension of time is filed.

DATED this            day of APRIL, 1994

Michael L. Brant  
Michael L. Brant, Hearings Officer

#### NOTICE OF APPEAL RIGHTS

You are hereby notified 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 the 7th day  
of April A.D., 19 94 at 9:13 o'clock A.M., and duly recorded in Vol. M94  
of Deeds on Page 10252.

FEE No Fee

Evelyn Biehn County Clerk  
By Douglas Mulendore