

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF KLAMATH

In the Matter of the Annual Review of the)
Home Occupation Permit for Chauncey) ORDER
and Penny Farrell, HOPU 2-94)

1. Nature of the Proceeding.

This annual review of the Home Occupation Permit granted to Chauncey and Penny Farrell came before the Board on March 20, 1995 following a referral by the Planning Director.

2. Names of those Involved.

Members of the Board of Commissioners who participated in the hearing were Clif McMillan, Jean Elzner and David Henzel. The permittee's were present and represented by their attorney, Michael L. Spencer. The Planning Department was represented by Carl Shuck, Planning Director and Kim Lundahl, Senior Planner. Karen Burg was the Recording Secretary. Opponents to the annual review were represented by William P. Brandsness. A number of witnesses testified and a list of those who participated is on file at the Planning Department.

3. Scope of and Criteria for Review.

This was an annual review conducted pursuant to Article 85.040 of the Klamath County Land Development Code which mandates an annual review of home occupation permits issued in Klamath County. The scope of and criteria for review is to determine if the permittee's have remained in compliance with the requirements of Article 85 and specifically Article 85.020 which was the basis for their original application.

4. **Findings of Fact.**

After hearing all of the testimony of the parties and having considered the record of all prior proceedings which was contained in the record of this proceeding, the Board finds:

1. The testimony was clear and unrefuted that all aspects of the use are being conducted wholly within the dwelling.
2. The testimony clearly established that the permittee's, who are the residents of the dwelling, each conduct counseling or therapy sessions and that they employ one part time bookkeeper/receptionist.
3. The evidence was clear and unrefuted that there is no outdoor storage of materials or goods.
4. The evidence was clear and unrefuted that no equipment was used and therefore there could be no adverse or harmful affect from such equipment to abutting properties.
5. The evidence was clear and unrefuted that no internal or external alterations of the dwelling or accessory buildings has occurred. The only alterations to the site were the paving of a portion of the lot for off street parking but this is not an alteration of the dwelling or of an accessory building.
6. The evidence, in the form of photographs, shows that the use utilizes a sign not greater than 3 square feet in area.
7. The County, since 1992, has approved numerous home occupation permits under Article 85.020. Those permits range from camera repair facilities, firearms repair, auto repair, auto wholesale brokerages, welding facilities, a tanning and toning salon, an antique shop and similar other businesses. These applications for those permits indicated that some

would have no employees, others would have one employee, one had a husband and wife, one was family owned and operated with no more than one full time employee and one was for the owner and his son. None of the permits issued, other than the permit to the Farrells, contained any limitation on the amount of traffic involved. Testimony also established that, other than an annual review for the permit for the tanning and toning salon issued one week prior to this permit, the County has not required any other home occupation permittee's to comply with the annual review process.

5. Conclusions of Law.

After careful consideration of the facts as found by the Board and after reviewing the criteria found in Article 85.020, the Board concludes that the permittee's continued to be in compliance with the provisions of Article 85 during the last year.

The Planning Department Staff Report recommended denial of this annual review based upon its interpretation that the permittee's were in violation of Article 85.020C in that the use employed more than 1 full or part time person. In essence, the Planning Department submitted that they were incorrect in approving the original application based upon the fact that they now concluded that the use employed three persons, each of the Farrells and the part time bookkeeper/receptionist. The opponents to this review supported this position. The Board finds that the prior interpretations of the County, in granting home occupation permits to other applicants who indicated on their applications that their use would employ more than just the single applicant, along with the provisions of Article 85.020A which requires that the use be operated by the resident, supports the position earlier taken by the Planning Department and the position of the permittee's that the owners of the property were not intended to be

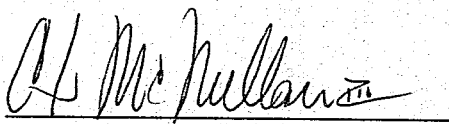
counted as a person being employed by the use.


6. Order.


Based upon the Findings of Fact and Conclusions of Law contained herein, the Board of County Commissioners hereby Orders that the home occupation permit for Chauncey and Penny Farrell shall continue as issued pending the next annual review.

DATED this 2nd day of April, 1995.

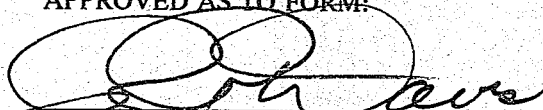
BOARD OF COUNTY COMMISSIONERS


Cliff McMillan, Chairman


Jean Elzner, Commissioner


David Henzel, Commissioner

APPROVED AS TO FORM:


Reginald Davis, 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 mailing of this ORDER. Contact the Land Use Board of Appeals for information as to how to file this appeal. Failure to do so in a timely manner may affect your right to appeal.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 28th day
of April A.D., 19 95 at 10:48 o'clock A M., and duly recorded in Vol. M95
of Deeds on Page 10912.

FEE Comm. Journal

By Bernetha G. Letsch, County Clerk
