24620 BEFORE THE HEARINGS OFFICER Vol. m96 Page 28205
KLAMATH COUNTY, OREGON

'96 SEP -9 A11:42

IN THE MATTER OF CUP 69-96 AND LP 50-96 FOR GIENGER INVESTMENTS TO ESTABLISH USES NOT IN CONJUNCTION WITH FARM USE AND DIVIDE THE PROPERTY

1. NATURE OF THE REQUEST:

The applicant wishes to establish uses, three homes not in conjunction with farm use on property south of Chiloquin. Also considered was the request to partition the parent 123 acres into three parcels of 35.2, 39.7, and 48 acres. This request was heard by the Hearings Officer SEPTEMBER 6, 1996 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 and PW Karen Burg.

3. LOCATION:

The property under consideration is located east of Hwy 97, north of Modoc Point. Pors. Secs. 10 & 15, T 36S R 71/2 E.

4. RELEVANT FACTS:

The property is within the Agriculture Plan designation and has an implementing zone of EFU-CG. The parent property is 123 acres in size and IS NOT ENTIRELY under farm tax deferral. Land uses and lot sizes in the area are similar to that proposed by this application. Rural-residential land use and similar lot sizes are also found within one mile of this project. Fire protection is provided by C/ALRFD.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-e, 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 smaller parcels as rural-residential is compatible with the predominant adjacent land uses as the existing density of the area will not be markedly increased.
The applicant has demonstrated the small parcels under consideration here are not considered commercial agricultural parcels size due to 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 and non commercial farm use. The proposed non-farm uses will not interfere with the on-going use as sufficient lot area and geographic boundaries provide a buffer/setback from agricultural management practices. 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 lands. The Hearings Officer finds this will mitigate impact to farm operations.

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 rural-residential and commercial farming. The land use pattern of the area will not be modified as the residential intensity will be marginally 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 parcels are substantially smaller than the 80 acre size required by HB 3661 and are therefore thought not appropriate for commercial farm use. The proposed home is to be located on property with various soil SCS ratings. The Hearings Officer finds this non farm parcel size and soil classification unsuitable for commercial agricultural use due to its small size, and the testimony of the applicant stating a farm income suitable to support a family cannot be generated on this property.

5. 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 parcels are created for proposed non-farm uses. The land is not viable for commercial agriculture since they are less than 80 acres.

2. Access to the parcel is from Hwy 97. Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of GIENGER for CUP 69-96 and LP 50-96 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 50-96 shall not be filed nor shall a building permit for a non-farm use be issued under this order until the applicant provides the Planning Department with evidence parcels 2 & 3 have 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 69-96 will not be effective until LP 50-96 is filed in the office of the County Clerk and will expire two years later unless utilized or extended.

4. LP 50-96 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing and will expire one year from the date below unless filed or extended.

DATED this 6th day of SEPTEMBER, 1996

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.

REQUIREMENTS FOR FINAL APPROVAL

Partition No. LP 50-96/Hill/Gienger

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. Applicant is required to pay all advalorem taxes, any additional taxes, special assessments, fees, interest and penalties prior to partition being recorded.
2. The partition is exempt from surveying requirements. Access must be approved by ODOT prior to recording the final plat.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 9th day of September A.D., 19 96 at 11:42 o'clock A.M., and duly recorded in Vol. M96, of Deeds on Page 28205.

Bernetha G Letsch, County Clerk

FEE No Fee By