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BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 102-96 AND LP 73-96 FOR NORMAN SMALL TO ESTABLISH USES NOT IN CONJUNCTION WITH FARM USE AND DIVIDE THE PROPERTY

1. NATURE OF THE REQUEST:

The applicant wishes to establish two existing homes and a new home as uses not in conjunction with farm use on property south of Klamath Falls. Also considered was the request to partition the parent 72 acres into three parcels of 10.2, 37.6 and 24.1 acres. This request was heard by the Hearings Officer DECEMBER 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 PW, HSH Karen Burg and Kim Lundahl.

3. LOCATION:

The property under consideration is located west of Cheyne Rd., at Buesing Rd.. A portion of the S 1/2 NE 1/4 Sec. 31, T 40S R 10E. T.A. 4010-31-3800.

4. RELEVANT FACTS:

The property is within the Agriculture Plan designation and has an implementing zone of EFU-C. The parent property is 72 acres in size, IS under farm tax deferral, is not within a Goal 5 overlay, and is rated Class IV soils. 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 Merrill RFD.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-d, 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 small parcel proposed as rural-residential is compatible with the predominant adjacent land uses as the existing density of the area will not be increased as the two existing residences are long established. The applicant has demonstrated the small parent parcel (72 acres) under consideration here is not considered a commercial agricultural size due to being smaller than the 80 acre minimum required by HB 3661.

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 commercial farm use. The proposed/existing 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 not be markedly 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 SCS rating IV. The Hearings Officer finds this non farm parcel size 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 non-farm uses. The small proposed parcels, as well as the parent parcel, are not viable for commercial agriculture since they are less than 80 acres.

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

6. ORDER:

Therefore, it is ordered the request of SMALL for CUP 104-96 and LP 73-96 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 73-96 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 parcel 1 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 104-96 will not be effective until LP 73-96 is filed in the office of the County Clerk and will expire two years later unless utilized or extended.

4. LP 73-96 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 DECEMBER, 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 6th day of December A.D., 19 96 at 11:14 o'clock A.M., and duly recorded in Vol. M96, of Deeds on Page 38098.

Bernetha G. Letsch, County Clerk
By Dorothea Rose

FEE No Fee: Return: Commissioners Journal