

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR KLAMATH COUNTY, OREGON

IN THE MATTER OF THE APPEAL OF THE  
DENIAL OF THE DECISION OF THE  
PLANNING DEPARTMENT FOR THE  
ESTABLISHMENT OF A FARM  
DWELLING

JEREMIAH GEANEY,

Applicant.

FMD No. 13-95

ORDER

This matter came before the Board following the remand by the Oregon Land Use Board of Appeals of an earlier decision of the Board. A hearing was held on November 14, 1996 and notice was given in conformity with the Klamath County Land Development Code and related statutes and ordinances. The Klamath County Planning Department was represented by Mr. Kim Lundahl and the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by reference into this matter, including all proceedings held prior to the LUBA remand. The appellant was present and represented by Michael L. Spencer, who presented argument for the appellant. Susan Peterson was present and represented by William M. Ganong, who presented argument for the appellant.

ISSUES RAISED ON APPEAL

The Appellants filed a statement of appeal in accordance with Article 33.040 setting out certain issues that they were raising. Since this is a *de novo* appeal, the appeal is not limited to those issues.

The first issue raised is that the applicant submitted sufficient information to support his

application, even though it was not in the form of a Schedule F for the specific property or a letter from a CPA.

The second issue raised is that the information submitted established that the property meets the criteria for a farm management dwelling.

The third issue raised is that the income test must be satisfied by the person residing in the farm management dwelling.

The fourth issue raised is that the approval of the Planning Director of November 20, 1995 was never rescinded by any Order of the Planning Director and that the Planning Director lacked authority to take further action after approving the application. Therefore, the original approval is valid and this appeal is moot.

#### FINDINGS OF FACT

The Board of County Commissioners find:

1. The parcel in question is 96.78 acres in size and is Zoned EFU-CG.
2. The parcel is currently employed for farm use. It is used for growing crops and for feeding livestock.
3. There are no other dwellings on the property.
4. The dwelling will be occupied by relatives of the applicant, who is the owner of the land, and their principal occupation will be to assist in the farm use of the land on a commercial scale by providing security and other services. The language in KCLDC 54.060 (4) is ambiguous in that it can be read to mean that the occupant of the dwelling must be the party responsible for the production of the income or that the land on which the dwelling is situated must be responsible for the production of the income. The Board, however, specifically finds that the land has produced the required income as set forth below.

5. The parcel passes the Income Test. The evidence submitted by the applicant, specifically the statements by the prior land owner, Jim O'Connor, sufficiently establishes that the parcel in question produced at least \$40,000.00 per year in gross income in at least three of the last five years, after deducting the cost of the purchase of such livestock as were purchased.

6. The lot was legally created.

7. Evidence produced shows that the dwelling site can obtain approval for on-site sewage disposal and will be adequately served by road access, water, utilities and fire protection.

8. Approval of this dwelling will not create conditions or circumstances that the Board determines to be contrary to the purposes or intent of the plan or code in that the land is of sufficient size and character to adequately support this dwelling.

9. The proposed dwelling and its placement all are in conformance with the standards and criteria of the code.

10. The area where this dwelling is proposed contains other such dwellings and this approval would not materially alter the stability of the overall land use pattern in the area.

11. The location of the dwelling is such that it will not have any impact on nearby farm lands and operations in that it is sited close to the adjoining property's residence.

#### CONCLUSIONS OF LAW

Based upon the foregoing, the Board of County Commissioners makes the following conclusions of law:

1. The provisions of KCLDC 54.060 B.(4) are ambiguous. The Board interprets this section to mean that the land where the dwelling is to be sited must have been responsible for the production of the income required. The dwelling itself must be occupied by a person or persons who are principally engaged in the farm use, but they need not be solely responsible for the

production of income. Likewise, income produced prior to the ownership of the land may be considered.

2. The application meets all criteria required under KCLDC 54.060.

3. The Board concludes that any credible evidence of income is sufficient to satisfy the income test. KCLDC 54.060 B. (5) provides that the income information "should" be by way of Federal Income Tax Schedule F. Such a Schedule was provided, but it was for the entire O'Connor operation, of which this parcel was only a portion. KCLDC 12.060 B.(1) provides that the word "should" is permissive and therefore there is no specific requirement for the means of proving income.

4. Given this decision, the Board makes no decision regarding the contention that the prior approval is still valid.

#### ORDER

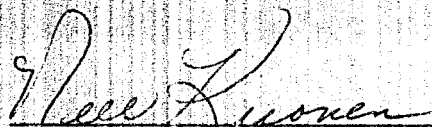
Based upon the findings of fact and conclusions of law herein, the Board ORDERS that the decision of the Planning Director denying the application be overturned and the application be approved.

Dated this 19<sup>th</sup> day of December, 1996.

BOARD OF COUNTY COMMISSIONERS

  
Jean Elzner, Chairperson

  
Floyd Wynne, Commissioner

  
Nell Kuonen, Commissioner

#### NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Oregon Land Use Board of Appeals by filing with the Land Use Board of Appeals a notice of intent to appeal as set out in



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the administrative rules of the Land Use Board of Appeals, together with the required fee, within twenty one (21) days of the date of mailing of this decision. Failure to file a notice of intent to appeal within the time provided will result in the loss of your appeal rights.

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath Countyof DecemberA.D., 19 96

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by

Bernetha G. Letsch, County Clerk

Kathleen Ross