

BEFORE THE BOARD OF COMMISSIONERS

KLAMATH COUNTY, OREGON

In the Matter of the Approval of a Request)
 for Placement of a Farm Manager's)
 Dwelling on Tax Lot 4010-19-100;)
 Reversing the Decision of the Planning)
 Director; Docket FMD 8-96; Applicant)
 Dianne Earnest.)

BOARD ORDER _____

THE BOARD OF COMMISSIONERS OF KLAMATH COUNTY, OREGON (the Board) sat for the transaction of county business on November 26, 1996, all Commissioners being present.

IT APPEARING TO THE BOARD that on September 26, 1996, Dianne Earnest (applicant) applied for a farm manager's dwelling on a parcel known as Tax Lot 4010-19-100, Planning Docket FMD 8-96; and

IT FURTHER APPEARING TO THE BOARD that on October 14, 1996, the Klamath County Planning Director denied the application; and

IT FURTHER APPEARING TO THE BOARD that the applicant made a timely appeal of the denial of the Planning Director, and

IT FURTHER APPEARING TO THE BOARD that on November 26, 1996, the Board held a hearing on the appeal and voted 3-0 to reverse the Planning Director's decision and to approve the application for a farm manager's dwelling, and directed staff to prepare the necessary findings for approval; and

IT FURTHER APPEARING TO THE BOARD that the findings attached as Exhibit A and incorporated into this order by reference have been prepared in support of the decision made herein; NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD that the Board reverses the Planning Director's denial of the application by Dianne Earnest for a farm manager's dwelling on Tax Lot 4010-19-100 (Planning Docket FMD 8-96), and, for the reasons stated in the findings attached hereto as Exhibit A and based upon substantial evidence in the record, approves the application.

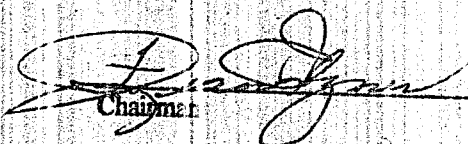
DONE Dec. 19, 1996.

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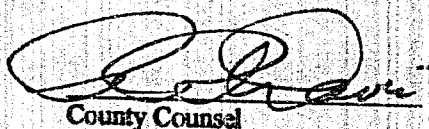
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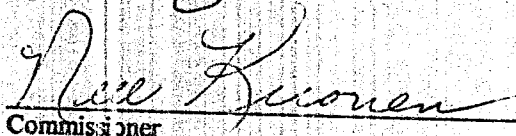
KLAMATH COUNTY BOARD OF COMMISSIONERS

County Clerk


Chairman

APPROVED AS TO FORM BY


County Counsel


Commissioner

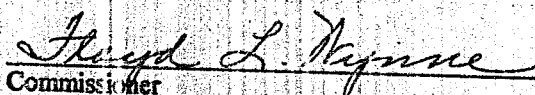

Commissioner

EXHIBIT "A"

BOARD ORDER _____

PLANNING DIRECTOR DECISION:

October 14, 1996

BOARD OF COMMISSIONER'S DECISION

REVERSING PLANNING DIRECTOR'S DECISION November 26, 1996

DOCKET:

FND 8-96

REQUEST:

Placement of a farm manager's dwelling on a parcel zoned for exclusive farm use.

APPLICANT:

Dianne Earnest

REPRESENTED BY:

David J. Hunnicutt, Oregonians In Action

TAX LOT:

4010-19-100

LOCATION:

8110 Matney Way, SW corner of Matney Way and Cheyne Rd.

ZONE DESIGNATION:

EFU Exclusive Farm Use

REVIEW CRITERIA:

Article 54, Klamath County Land Development Code, ORS 225.283(1)(e), OAR 660-33-130(9)

FINDINGS:

A. Background Facts

1. Parcel Size: Approximately 75.7 acres.
2. Access: Matney Rd.
3. Current On Site Land Use: Grazing
4. Water: To be provided by an on-site well.
5. Sewage Disposal: An on-site septic system would be required.
6. Fire Protection: Klamath County Fire District.
7. Taxes: Farm deferral.

B. Applicable Oregon Revised Statutes and Analysis

1. Statutes, which on their face apply to this application, including the following:

1.1 ORS 215.283(1)(e). This statute lists the requirements for a farm managers dwelling, which is allowed on land zoned for exclusive farm use if the applicant demonstrates the proposed dwelling is:

(a) Located on the same lot or parcel as the dwelling of the farm operator; and

(b) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

2. The applicant submitted a Memorandum of Law and a Farm Management Plan (FMP) in this matter. According to the FMP, the applicants tract consists of only one parcel, upon which the proposed dwelling will be sited. There is no evidence which disputes the FMP, and the Board finds that the evidence submitted by the applicant is sufficient to show compliance with this requirement. The applicant therefore meets the criteria in (a) above.

3. According to the FMP, the dwelling will be occupied by the applicants son and his family. The applicant is unable to significantly participate in the farm activities due to her medical condition and her need to care for her bedridden mother, who lives with the applicant. The applicant's husband is also unable to participate in a significant manner due to his work as a long haul truck driver and his medical condition. Although the farm is currently being rented for grazing, the FMP indicates the applicant intends to plow over 30 acres of pasture for alfalfa production, and to purchase cattle to stock the pasture. The applicant indicates that she cannot make these improvements without the assistance of her son to manage these activities. As a result, the son's assistance will be required to improve and manage the farm. There is no evidence in the record which disputes any of these allegations. The Board finds that the evidence submitted by the applicant is sufficient to show compliance with this requirement. The applicant therefore meets the criteria in (b) above.

4. Based upon the foregoing, the Board finds that this application meets the requirements for a dwelling under ORS 215.283(1)(e).

C. Applicable Oregon Administrative Rules and Analysis

1. Oregon Administrative Rules, which on their face apply to this application, include the following:

1.1 OAR 660-33-130(9): *To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing*

the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

2. The Memorandum of Law submitted by applicant in this matter discusses the Oregon Supreme Court decision in Brentmar v. Jack on County, 321 Or 481 (1995). In Brentmar, the Oregon Supreme Court held that a county cannot adopt additional criteria which restrict the uses allowed by ORS 215.283(1). The applicant in this matter has applied for a farm managers dwelling, which is a use allowed by ORS 215.283(1)(e). Pursuant to ORS 197.646, Klamath County is required to amend its comprehensive plan and land use regulations to incorporate any changes to the Oregon Administrative Rules occurring after the comprehensive plan and land use regulations were most recently acknowledged. The Board finds that the Klamath County Land Development Code was amended (§54.060(C)(1)) in 1995 to incorporate OAR 660-33-130(9). The Board further finds that reliance on additional County criteria outside of ORS 215.283(1)(e) would violate Brentmar and therefore be invalid.

If it is determined that OAR 660-33-130(9) contains criteria which were not incorporated by the County when it amended §54.060(C)(1), the Board nevertheless finds that, to the extent the administrative rule contains criteria which are not contained in ORS 215.283(1)(e), those additional criteria are invalid under Brentmar. Specifically, the Board finds that ORS 215.283(1)(e) does not require that the farm operator do the actual work on the farm, as is apparently required by OAR 660-33-130(9), nor does the Board find that the ORS 215.283(1)(e) requires the farm operator to make the "day to day decisions about such things as planting, harvesting, feeding, and marketing." The Board finds that a farm managers dwelling may be essential to the continuation of the parcel for farm use if the applicant is unable to participate in the farm labor or day to day decisions, and therefore the Board believes that OAR 660-33-130(9) contains requirements in addition to those required by ORS 215.283(1)(e).

D. Applicable Klamath County Land Development Code Provisions and Analysis

1. The following KCLDC provisions are applicable on their face to this application:

1.1 KCLDC §54.050: This section provides

All of the following conditions must be satisfied for dwelling applications in Exclusive Farm Use Zones to be approved:

A. The lot or parcel upon which the dwelling will be placed was legally created; and

B. The proposed dwelling site can obtain approval for on site sewage disposal, will be adequately served by road access, water, utilities, and fire protection (will not cause these facilities or services provided to the area to exceed existing capacities); and

C. Approval of the dwelling will not create conditions or circumstances that the County determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations; and

D. The dwelling and its placement are in conformance with all required standards and criteria of County code; and

E. Approval of the dwelling will not materially alter the stability of the overall land use pattern in the area when considering the cumulative impact of dwellings on other lots or parcels in the area; and

F. The dwelling and accessory structures are sized on the parcel such that the building site selected will minimize impact to nearby farm and forest lands and operations; and

G. Before final planning approval can be granted, the Planning Director or his/her designee shall check the Division of State Lands' most current wetlands inventory maps, and determine if the site proposed for development may have a wetland located on it. If it is determined that a DSL-recognized wetland may be located on a site proposed for development, the Planning Director or his/her designee shall notify the Division of State Lands. A copy of this letter shall be sent to the applicant. DSL has 30 days to comment, beginning on the day notification is sent. A final decision on the application cannot be rendered until the 30 day comment period has expired.

H. The use complies with other conditions as the review authority considers necessary.

1.2 KCLDC §54.060(B)(1), (2), (3), (4), (5)(b): These subsections provide:

B. REVIEW CRITERIA: *All applications for farm dwellings will be reviewed according to the criteria enumerated in 54.050, as well as the following criteria. At the time an application is made for a farm dwelling building permit, the applicant shall provide documentation showing that the dwelling is in conjunction with farm use of the property. A dwelling is considered to be customarily provided in conjunction with farm use and satisfies the requirements of this section when all of the following conditions (1 through 5) are met:*

1. Except if the farm passes the capability test (see 54.060(B)(5)(c)), the parcel upon which the dwelling will be placed meets the minimum lot size in the applicable zone, as follows:

EFU-C - The parcel is at least 80 acres in size

EFU-CG - The parcel is at least 80 acres in size;

EFU-G - The parcel is at least 150 acres in size;

2. The parcel is currently employed for farm use as defined in ORS 215.203.

3. There is no other dwelling on the subject tract, except that permitted for seasonal farm-worker housing by ORS 215.283(1)(a) and ORS 215.213(1)(r) and defined in ORS

197.765.

4. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land at a commercial scale, and in the case of item (5) below, produced the commodities which earned the income necessary to meet the relevant requirement.

5. The tract in which the parcel is located passes one of the following tests. Income information should be presented to the Planning Department by way of Federal Income Tax Schedule F.

b. **INCOME TEST.** A farm passes the income test if either:

1) The tract which includes the farm is not high-value farmland, and the farm produced in the last two years or three of the last five years at least \$40,000 (1994 dollars) in gross annual income from the sale of farm products. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

2) The tract which includes the farm is high value farmland, and the farm produced in the last two years or three of the last five years at least \$80,000 (1994 dollars) of gross annual income from the sale of farm products. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

1.3 KCLDC §54.060(C): This subsection provides:

C. ACCESSORY FARM DWELLINGS - accessory dwelling(s) for a farm operator's relative or farm help may be allowed if the principal farm dwelling meets the criteria in 54.050 and 54.060(B)(1) - (4), and the accessory dwelling meets all of the following criteria:

1. The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, and whose assistance in the management of the farm and consequent residence on the property is or will be required by the farm operator (the farm operator is the person who does the work and makes the day to day decisions).

2. There is no other dwelling on lands designated for exclusive farm use owned by the farm operator, that is vacant or currently occupied by persons not working on the subject farm or ranch, and that could reasonably be used as an accessory farm dwelling.

3. The proposed accessory dwelling will be located either:

- a. On the same parcel as the dwelling of the principal farm dwelling (i.e. the farm operator's dwelling); or
- b. On the same tract as the principal farm dwelling when the lot or parcel on which the accessory dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or
- c. On a lot or parcel in the same tract, but other than the lot or parcel on which the principal farm dwelling is located, when the accessory farm dwelling is a manufactured dwelling and a deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules.

4. The tract on which the accessory farm dwelling and principal farm dwelling are to be located passes the income test as described in 54.060 (B)(5)(b).

2. The Planning Director found that the applicant had complied with all of the aforementioned Klamath County Code criteria except §54.060(B)(5)(b)(1) and §54.060(B)(5)(c). The Board finds that the provisions of §54.060(B)(5)(c) do not apply to a farm managers dwelling pursuant to §54.060(C) and therefore do not form the basis for denial of this application.

3. Regarding §54.060(B)(5)(b), the Board finds that the County may not enforce this provision of its ordinance to deny a farm managers dwelling pursuant to ORS 215.283(1)(e). The Board finds that §54.060(B)(5)(b) contains additional County criteria which are not contained in ORS 215.283(1)(e). The Board finds that application of this additional criteria would violate Brentmar, as discussed in section (C)(2) of these findings.

4. The Planning Director also expressed concern over the failure by the applicant to comply with the minimum lot size provisions in §54.060(C)(1). The Board finds that this section contains additional county criteria over and above that contained in ORS 215.283(1)(e), and that application of this additional criteria would violate Brentmar.

5. The Board finds that the County's Senior Planner found compliance by the applicant with the remaining County ordinance requirements. There was no evidence submitted to the contrary. The Board therefore finds that this application complies with the remaining applicable provisions of the County's ordinance. The Board finds that some or all of the remaining applicable provisions of the County's ordinance may be invalid under Brentmar. Rather than analyzing each provision, however, the Board accepts the unchallenged assertion of the County's Senior Planner regarding the applicant's compliance with the remaining code requirements.

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 23rd day
of December A.D., 19 96 at 9:25 o'clock A. M. and duly recorded in Vol. M96
of Deeds on Page 39656
Bernetha G. Letsch, County Clerk

FEE No Fee: Return: Commissioners Journal

by

Kathleen Ross