

'96 DEC 27 P3:26

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIn the Matter of CUP No. 66-96
and LP No. 48-96 for Steve Ennis

ORDER

1. NATURE OF THE REQUEST AND ITS STATUS:

This matter came before the Land Use Hearings Officer of Klamath County, Oregon on remand by Order of the Board of County Commissioners of Klamath Falls, Oregon. The applicant initially requested that a parcel of land 14.6 acres in size be partitioned into three parcels and that the he be granted conditional use permits to construct a church on one parcel and residences not in conjunction with farm use on the other two parcels. At the close of the initial hearing before the hearings officer, the applicant amended his application to request that the partition divide only 4.5 acres from the main parcel and that the conditional use permit be limited to the establishment of a church on said small parcel. The applicant's revised request was granted by hearings officers Neal Buchanan. The hearings officer's decision was appealed by Paul and Carol Ritter to the Board of County Commissioners. The Ritters alleged, among other things, that they did not receive a fair opportunity to comment on the revised application. The Board of Commissioners agreed and remanded the revised application to the hearings officer for a further hearing.

2. PARTICIPANTS:

The hearings officer on remand was Michael Brant. The planning department was represented by J. Kim Lundahl and the recording secretary was Karen Burg. The applicant appeared personally and through his attorney, William M. Ganong. Paul and Carol Ritter appeared personally and through their attorney, Michael Rudd. Also testifying were the land owners Steve and Patty Rajnus. The hearings officer also reviewed and considered the testimony and exhibits from the prior hearings.

3. LOCATION OF THE PROPERTY:

The property is located along highway 140 east, 3/4's of a mile east of Yonna Drive in Yonna Valley.

4. RELEVANT FACTS:

The property is zoned EFU-CG. It is composed primarily of SCS class III soil. It is triangular in shape. It was farmed in the past but has lied fallow for several years. At some time in the past this property was part of the Jend-zejewski ranch and was entitled to receive irrigation water from a well located approximately 1,440 feet from the property. However, the property

was separated from the main ranch and no right to use the well was transferred or reserved for this property. The owners have applied for a water right for the property, but no certificate has been granted. If water does become available for irrigation, the cost of the well, pump and irrigation pipe would be about \$45,000. There was substantial testimony that the return from farming the land would not justify the cost of the irrigation system and other costs of farming the property. The property is not high value farm land as that term is defined in Land Development Code (LDC) § 54.015 E because it is not class I or II soil and has not been used to grow any of the designated perennial crops.

The subject area is generally agricultural in nature. However, there are many residences located in the area. The applicant and members of the church which will be constructed on the subject property considered other locations, but were unable to find any that meet their needs. The site plan submitted by the applicant shows that 4.5 acres is the minimum amount of land required for the church and necessary appurtenances, while also providing a reasonable set back and buffer area from the adjoining farmland.

4. CODE CRITERIA AND FINDINGS.

LDC § 54.030 sets forth the uses which are allowed in the EFU - CG Zone as conditional use. Paragraphs X and Y of said section provide for the establishment of churches. Paragraph X provides in part: "New development of these types is limited to lots for parcels not determined to be high-value farm land." As is found above, the subject property is not high-value farm land as that term is defined in LDC § 54.015E.

The review criteria for establishing a conditional use are provided in LDC § 54.040. The criteria and the findings concerning each criteria are as follows:

A. The proposed use will not create conditions or circumstances that the County determines would be contrary to the purposes or intent of its acknowledged comprehensive plan, its policies or land use regulations. The County's comprehensive plan and policies are designed to protect agricultural land and agricultural land uses. In designating land as agricultural, Policy 1 under Goal 3 - Agricultural Lands, provides in part that the county shall: "****taking into consideration all of the following factors:

(1) ***,

(2) Land presently irrigated or potentially irrigable in order to become economically productive, ***"

The "rationale" sec. of this policy recognizes:

"The unique situation of farmers in Klamath County include the following:
There is a maximum of a 90-day growing season. However, no areas expect 90 continuous frost-free days;

There is very low rainfall. Precipitation is the same as Phoenix, Arizona. Timely irrigation is necessary;

There are many natural rivers, streams and hills, as well as irrigation canals which cut up the prime farm land into smaller fields. New cost efficient sprinkler irrigation systems and large, expensive farm machinery do not work economically in these smaller fields;

The economic and frost conditions have dictated certain special irrigation sprinkler systems to minimize frost damage;

There are risks which all farmers face, but they are intensified in Klamath County because of the short growing season, the frost problems, as well as other weather conditions;

An extremely small percentage of Klamath County land area is privately owned and buildable. This creates economic pressures to utilize the farm ground for residential and commercial uses. This is combined with the above factors to increase the value of real property far above a value supported by farm income; Real estate may not be utilized significantly for farm crop production unless it has water to the land by means of irrigation; ***."

There is considerable testimony in the record concerning the availability of water to the subject land. It is clear that there is no well on the subject land, there is no permit from the State of Oregon for a well on the subject land, there is a water right for water for the subject property from a well which is owned by a third party and which is located approximately 1,440 feet away from the subject property. The owner of the property can not acquire the right to use the well from the current owner of the well. Assuming that said water right is valid and assuming that arrangements could be made with the owner of the well for the use of the well to provide water to the subject property, the cost of delivering the water to the subject property and installing the necessary sprinkler system to grow crops on the subject property would exceed \$38,000.00 or approximately \$2,500.00 per acre. Tom Mallans, a farmer in this area, testified that it is not economically feasible to purchase the irrigation equipment and develop irrigation on this property. Mr. Mallans's testimony was supported by testimony of the owners of the property. The subject property is not high valued farm land, it is not currently irrigable because of the lack of water for the property and the high cost of developing a water system for the property. The parcel is irregular in size which makes it difficult to farm. There is significant testimony in the record that the LDS Church considered many other parcels of property for the location of its church, but that this parcel is the only parcel which met the requirements for the church. The church will only occupy about 30% of the subject property and the parcel which the church will occupy will be developed so as to provide significant buffer areas between the church and adjoining farm land. The proposal to construct the church on this piece of property is consistent with the policies of the Klamath County Land Use Plan which are designed to protect high valued farm land and irrigated farm land and which also recognize and provide for the establishment of rural services such as churches on rural land. The opponents to the proposal testified that the establishment of the church interfere with their adjoining farm practices. Other testimony was presented that there are schools on farm land in Klamath County which are surrounded by commercially farmed land

and that the presence of said schools does not significantly affect the farming practices on the adjoining farm land. In addition there are many instances of residences, including in the general area of this parcel, located on farm land and surrounded by commercial farm operations and which do not significantly impact the commercial farm operations. The proposed conditional use is not contrary to the purposes and intent of Klamath County's plan, policies and land use regulations

B. The proposed use is in conformance with all standards and criteria of this code notably article 57. Article 57 is the significant overlay zone. There are no significant resources protected by such a zone on this property or in this general area. Therefore, Article 57 is not applicable to this request. The subject property is located within Klamath County Fire Protection District #5 and emergency services are provided to the property by said District. The church facility will develop a domestic well for the provision of water for its domestic uses including the irrigation of its lawns and landscaping. In addition septic facilities will be established on the property for disposal of waste. The property adjoins Highway 140. The highway department will grant a permit for access to the highway from the subject property. The property is served by telephone and power lines which are already in place. The proposed use does meet the standards and criteria of this code.

C. The location, size, design and operating characteristics of the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forestry practices on nearby agricultural or forest lands. The Ritters testified that the location of the church on this property will force a significant change in the farm practices on the adjoining land. There is also significant testimony that similar uses, such as schools, have not required any significant changes in farming practices or significant increases in farming costs, and that there have been no safety related problems or incidences as a result of the location of said schools. The proposed plot plan for the church provides significant buffer areas between the church building and parking lot and the adjoining farm land. The location of a church on this parcel of property will not force any significant change in the farm practices or significant increase in the cost of those farm practices. There is no forest land near this property and the issue will have no impact on forest practices in the area.

D. Consistent with the requirements of the Code a written covenant will be recorded with the Deed from the landowner to the LDS Church which recognizes the rights of adjacent and nearby landowners to conduct farm or forest operations consistent with accepted farming and forest practices.

E. The proposed use will not significantly increase fire hazards or significantly increase fire suppression costs or significantly increase the risk to fire suppression personnel. There are many documented instances of fire suppression problems that arise from the location of dwellings and other improvements on forest land and the difficulties experienced in protecting the structures from wildfire. The location of the church on this parcel where there is no nearby forest land eliminates that risk. In addition, the church will provide a reservoir and hydrant for fire protection

which will be constructed to current fire codes. There is no indication at all that the location of the church on this parcel will increase fire hazards or fire suppression costs of any kind.

F. Other review criteria which applies to this property are those criteria set forth for non-farm partitions in LDC § 54.090E. Those criteria and the findings with respect to those criteria are as follows:

(1) The land division for the use as a church may be approved provided that the proposed parcel is not larger than minimum size necessary to accommodate the proposed use. The applicant has submitted a site plan which shows the location of the proposed building, parking lot, well, septic system including replacement lines and a buffer area which will be landscaped and which will lie between the improvements on the land and the adjoining farm land. The 4.5 acre parcel requested by the applicant is the minimum size necessary to accommodate the proposed use. The proposed parcel is designed to utilize land generally unsuitable for the production of crops or livestock. The limitations of this parcel, particularly the lack of economical irrigation water, its size and shape make it generally unsuitable for the production of crops or livestock.

(2) A land division for a dwelling not in conjunction with farm use may be approved only if the dwelling has been approved under § 54.070. In this case the applicant has withdrawn his request for conditional use permits to establish dwellings not in conjunction with farm use. Therefore no lot is being created for a non-farm dwelling and this criteria is not applicable to this request.

(3) The creation of a new parcel for a non-farm dwelling will be approved only if the creation of the parcel will not lead to the creation of other non-farm parcels to the detriment of the agriculture in the area. Again, the applicant has withdrawn his request for conditional use permits for non-farm dwellings. No non-farm dwelling permits will be issued in conjunction with the proposed partition. The remaining portion of the parcel will remain available for farm use or other uses to be determined in the future and pursuant to the regulations of the code.

The opening paragraph in § 54.090 provides: "Land divisions shall be processed and reviewed consistent with Articles 45 and 46. Use must be established along with parcel creation." The uses established with the parcel creation resulting from the proposed partition are the non-farm use as a church on the small parcel and continued availability of the larger portion of the parcel for farm use. Note that Articles 45 and 46 set forth the requirements for the submission of the preliminary and final plats for the proposed partition. The applicant has submitted his preliminary plat and it does comply with the requirements of these articles. The applicant will be required to comply with all of the other requirements of Articles 45 and 46 with respect to the filing of the final plat.

5. ORDER

Therefore, it is ordered that the amended request of the applicant for a conditional use permit to establish a church, the partition of the subject parcel to create a 4.5 acre parcel for the location of the church, are granted, subject to the following conditions:

(1) The applicant and landowner shall record a restrictive covenant in the Klamath County Clerk's office which shall recognize the rights of adjacent and nearby landowners to conduct farm or forest operations consistent with accepted farming practices and the forest practices act and prohibiting the property owner and their successors in interest from filing complaints about farm practices and forest practices which are consistent with accepted practices.

(2) LP 48-96 shall not be filed nor a building permit issued for the church until the applicant provides the planning department with evidence that Parcels 1 and 2 have been disqualified for assessment at farm use value and that any additional tax penalty imposed by the County Assessor pursuant to law has been paid.

(3) CUP 66-96 will not be effective until LP 48-96 is filed in the office of the county clerk and this CUP shall expire two years later unless utilized or extended.

(4) LP 48-96 must comply with code requirements, Oregon Revised Statutes and agency conditions prior to filing and will expire one year from the date of this Order unless filed or extended.

(5) Development of the proposed church is subject to final site plan approval as provided in Article 41 of the Land Development Code.

Dated this 27TH day of DECEMBER 1996

Michael L. Blaud
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.

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STATE OF OREGON; COUNTY OF KLAMATH:

ss.

Filed for record at request of Klamath County the 27th day
of December A.D., 19 96 at 3:26 o'clock P. M., and duly recorded in Vol. M96
of Deeds on Page 40152

FEE No Fee: Return: Commissioners Journal

by Bernetha G. Letsch, County Clerk
Kathleen Rose