

## BEFORE THE HEARINGS OFFICER KLAMATH COUNTY, OREGON

In the Matter of CUP 14-97 and LP 13-97 )  
 FOR JOHN HINTZ TO ESTABLISH RESIDENCES )  
 NOT IN CONJUNCTION WITH FARM USE AND )  
 DIVIDE THE PROPERTY, )

CUP 14-97/LP 13-97

JOHN HINTZE,

ORDER

Applicant.

97 APR 18 P1:17

## 1. NATURE OF THE REQUEST:

The applicant wishes to establish two new homes as uses not in conjunction with farm use south of Crystal Springs Rd., east of Klamath Falls. Also considered was the request to partition the parent 201.3 acres into parcels of 5, 5 and 191.3 acres. This request was heard by the Hearings Officer March 21, 1997 pursuant to Ordinances 44 and 45. The request was reviewed for conformity with Land Development Code Article 54 and with ORS 215.243.

## 2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neal G. Buchanan. The Planning Department was represented by Kim Lundahl, and the Recording Secretary was Karen Burg. Persons who testified included Henry J. Caldwell, Jr., Marla Riecke, Holly Wilson, Jerry Riecke, Jerry Noble, Terry Leeling, Kathy Noble, and Penny Frey. Exhibits A through I were offered, received and considered by the Hearings Officer.

## 3. LOCATION:

The property is civilly located south of Crystal Springs Rd., at Blue Gill Rd., Parcel 2, LP 28-83, being a portion of Section 27 and 28, Township 39S Range 10 EWM.

## 4. RELEVANT FACTS:

The property is within the Agriculture Plan designation and has an implementing zone of EFU-C. The parent property is 201.3 acres in size, is under farm use tax deferral, is not within a Goal 5 overlay, and is rated Class IVE soils. It appears that 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 the applicant's project. Fire protection is provided by KCFD #1.



## 5. FINDINGS:

The evidence submitted as the Staff Report, Exhibits B through X, and offered testimony show that there are concerns as to whether the proposal meets the approval criteria as set out in Code Articles 54 and 45.

The Hearings Officer finds this application:

A. Is compatible with farm use because the analysis of surrounding properties and their use indicates the size of the small parcels proposed as rural-residential is compatible with nearby land uses to the north as the residential density of the area will not be markedly increased.

B. 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 together with single family residential. The proposed non-farm use with reference to the two proposed five-acre parcels will not interfere with the ongoing use of the remainder of the parcel for farm use. The applicant has proposed as a condition of this approval to file a restrictive covenant which will prohibit the applicant and successors in interest from filing complaints concerning valid farming practices on nearby lands. The Hearings Officer finds that this proposed restrictive covenant will mitigate impact on farm operations.

C. 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 not be markedly increased.

D. Unfortunately, the proposed two five-acre parcels do appear to be situated upon lands which are suitable for the production of farm crops and livestock, considering the terrain, soil or land conditions, drainage and flooding, vegetation, location and size of the tract. The proposed non-farm parcels are substantially smaller than the 80 acre size required by statute. Unfortunately, a small parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm or forest use in conjunction with other land.

E. Partitions creating parcels for non-farm uses are reviewed in accordance with the criteria set out in the Land Development Code Articles 45 and Section 54.070.

The Hearings Officer finds that the partition conforms to only a portion of the criteria set out below:

A. The proposed small parcels are both proposed for non-farm use and residences are proposed. The small proposed parcels would not be viable for commercial agriculture, although they



nevertheless cannot be considered unsuitable pursuant to the review criteria set forth at Section 54.070B(3).

B. Access to the parcels is through a County maintained road (Crystal Springs Rd). Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered that the request of Hintze for CUP 14-97 and LP 13-97 is denied.

DATED this 18 day of APRIL, 1997.

  
NEAL G. BUCHANAN, 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 18th day  
of April A.D., 19 97 at 1:17 o'clock A. M., and duly recorded in Vol. M97  
of Deeds on Page 11829

Return: Commissioners Journal

Bernice G. Letsch, County Clerk

FEE No Fee

by Kathleen Ross