

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

In the matter of the appeal of
CUP 14-97 and LP 13-97

Applicant: John Hintze

ORDER

THIS matter came before the Board of County Commissioners of Klamath County, Oregon upon the appeal of applicant John Hintze of the Order of the Hearings Officer of Klamath County, Oregon which denied the applicant's request to partition two parcels five acres each in size from a parcel containing 201.3 acres and for Conditional Use Permits to establish homes not in conjunction with farm use on said two five-acre parcels. A hearing was held before the Board of County Commissioners on June 19, 1997. The applicant was present and was represented by attorney Michael Kudd. Several of the opponents to the application were present and were represented by attorney William M. Ganong. The planning department was represented by J. Kim Lundahl and the hearing was recorded by Recording Secretary Karen Burg.

ISSUES RAISED ON APPEAL

The appellant in his written reasons for appeal listed three issues. In determining this appeal the Board of Commissioners need only address one of the reasons for appeal because it is dispositive of the appeal. The appellant listed as his third reason for appeal:

"The hearings officer improperly interpreted Klamath County Land Development Code 54.707 and 54.090."

The Land Development Code sections cited by the appellant are the sections which set forth the criteria for reviewing applications for land partitions and conditional use permits in EFU zones. The appellant did not specifically detail how the Hearings Officer allegedly improperly interpreted the county's code. However, in reviewing the Order of the Hearings Officer, the Board of Commissioners note that the Hearings Officer only made one finding and interpretation of code that was adverse to the position of the applicant. That finding and interpretation of code was:

"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."

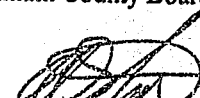
The reference by the Hearings Officer to the "80 acre size required by statute" refers to ORS 215.780 which requires a minimum parcel size of 80 acres in an EFU zone. Said minimum parcel size is also required by County Land Development Code in Section 54.100A. The five-acre parcels proposed by the applicant do not meet the state statutory requirement or the County Land Development Code requirement of a minimum parcel size of 80 acres. Therefore, the Hearings Officer had no choice but to deny the applicant's request.

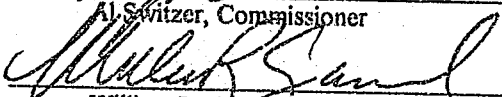
In his appeal, the applicant has provided no basis for an exception or variance to the statutory and code minimum lot size requirement. The Board of Commissioners finds that the Hearings Officer properly interpreted the statute and relevant Land Development Code section and properly denied the applicant's applications for Conditional Use Permits and a land partition.

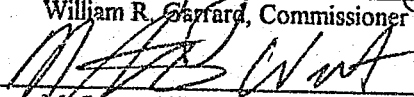
The Board of Commissioners having considered the testimony and arguments of the appellant and the respondents and having considered and reviewed the record in this matter finds, determines, and orders that the Order of the Hearings Officer dated April 18, 1997 denying the subject applications is affirmed and the appeal is denied.

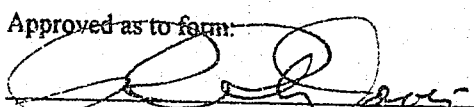
Dated this 30th day of July, 1997.

Klamath County Board of Commissioners


Al Switzer, Commissioner


William R. Garrard, Commissioner


M. Steven West, Commissioner

Approved as to form:

County Counsel

NOTICE OF APPEAL RIGHTS:

You are hereby notified that this decision may be appealed to the Land Use Board of Appeals within twenty-one (21) days following the date of the mailing period. Contact the Klamath County Planning Department for more information regarding this procedure. Failure to appeal within the time provided will result in the loss of your right to appeal this decision.

ORDER 2

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 1st day
of August A.D., 19 97 at 1:19 o'clock P. M., and duly recorded in Vol. M97
of Deeds on Page 25008.

FEE No Fee

Return: Commissioners Journal

By Bernetha G. Leisch, County Clerk
