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BEFORE THE KLAMATH COUNTY COMMISSIONERS
KLAMATH COUNTY, OREGON

In the Matter of the appeal of the Site Plan Application, Bonanza Branch, Church of Jesus Christ of Latter Day Saints Applicant: Steve Ennis	ORDER

'97 OCT -3 P2:02

I. NATURE OF THE APPEAL

The Application in this matter was submitted by The Church of Jesus Christ of Latter Day Saints in care of Terry Bradshaw, L.D.S. Physical Facilities, and was submitted upon a Commercial/Industrial Site Plan Application. The Application was reviewed per Article 41 of the Klamath County Land Development Code. The Site Plan Application requested that the Klamath County Planning Department approve a church meeting house upon 14.7 acres, zoned EFU-CG and located in Yonna Valley, on Highway 140 East, Klamath County, Oregon. The subject property had previously been the subject of a Conditional Use Permit and Partition Application submitted by the Church of Jesus Christ of Latter Day Saints, and the Application had previously been before the Klamath County Board of County Commissioners on two appeals with the last appeal being heard on February 3, 1997. Both of the previous appeals were upheld by the Board of County Commissioners and the Order entered March 12, 1997, is currently before the Land Use Board of Appeals, which hearing has been stayed by agreement of the parties.

The current Site Plan Application was approved on May 6, 1997,

by senior planner, J.K. Lundahl, and a Land Use Compatibility Statement was provided to the applicant. A Notice of Appeal was timely filed on May 13, 1997, by Bruce Ritter, Paul Ritter and Carol Ritter. The issue before the Commissioners was whether the site plan approval was appropriate or whether the church had failed to meet all of the requirements under the Land Development Code and the Oregon Administrative Rules, including LCDC requirements. The scope of review was de novo.

The appeal before the Klamath County Board of Commissioners was heard on June 24, 1997, and said appeal was upheld. The decision of the Board is reflected by this Order.

II. NAMES OF THOSE WHO PARTICIPATED

At the appeal hearing held on June 24, 1997, the commissioners present were Al Switzer, chairman, William R. Garrard and M. Steven West. Michael P. Rudd appeared on behalf of appellants, Bruce Ritter, Paul Ritter and Carol Ritter. The applicant appeared by and through his attorney William M. Ganong. Kim Lundahl, Klamath County Senior Planner and Carl Shuck, Klamath County Planning Director were present on behalf of the Klamath County Planning Department. The recording secretary was Erik Noble.

III. PROPERTY DESCRIPTION AND LOCATION

The subject property is a 14.7 acre parcel located on Highway 140 East, 3/4 of a mile east of Yonna Drive in Yonna Valley, Klamath County, Oregon. The subject property is outside the urban growth boundary.

/ / /

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IV. RELEVANT FACTS

The property in question is zoned EFU-CG. The property is composed of SCS Class III soils (19A-type soil) and is triangular in shape. The property has been farmed in the past and has grown such produce as strawberries, alfalfa and potatoes. For the past three years it has laid fallow. There exists on the property a water right granted by the State of Oregon and there is evidence in the record in the form of a permit to appropriate the public waters. Testimony in the record indicates that the Ritters and Mr. Jertberg have farmed the parcel as recently as 1993 and used water from the appropriate well and realized a profit from the property. Gross revenues per acre for strawberries were in excess of $11,000.00 per acre and grossed as high as $15,000.00 per acre. The property has been used in the past in conjunction with the current Ritter property. The subject area is generally agriculture in nature.

The Class III soil classification is the highest value soil in the Klamath Basin. The Commercial/Industrial Site Plan Application submitted by Terry Bradshaw request that the church occupy approximately 3.6 acres in Phase I of the development and that the church meeting house would consist of a meeting room, classrooms, a kitchen and various small meeting rooms.

V. RELEVANT CRITERIA

The application of The Church of Latter Day Saints is for a Commercial/Industrial Site Plan Application to place a church meeting house upon a 14.7 acre parcel zoned EFU-CG. The applicable

criteria was reviewed per Article 41 of the Klamath County Land Development Code. Oregon Statewide Planning Goals 3 and 14 are applicable as is Oregon Administrative Rules, Chapter 660. Furthermore, ORS Chapters 197 and 215 apply.

The Board heard arguments from both appellant and applicant and reviewed the Application. The Klamath County Planning Department staff reviewed the matter pursuant to the Land Development Code, Article 41. The staff approval did not consider nor comply with the Department of Land Conservation and Development's Administrative Rules regarding non-farm uses allowed on high value farm land under OAR 660-33-120 and 130. Under those rules, new churches are not allowed on high value farm land or within three miles of an urban growth boundary without the adoption of an exception to the applicable Statewide Goals pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

The staff reviewed the Application and made its approval based upon the applicants assertion that under the Oregon Supreme Court's holding in Brentmar v. Jackson County, 321 Or 481 (1995), the use of the property was a "use of right" under ORS 215.283(1). The Department of Land Conservation and Development Commissions Administrative Rules were not applied to the Application in this matter. The Commission considered the Supreme Court's holding in the Brentmar case and the Court of Appeals holding in Lane County v. LCDC, 138 Or App 635 (1996), *on recons* 140 Or App 368, *rev allowed* 324 Or 305 (1996) and Nichols v. Clackamas County, 146 Or App 25 (1997).

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The Brentmar action did not address LCDC authority under ORS Chapter 197 and the long history of case law directly addressing and affirming the Commission's authority to adopt Statewide Goals and Rules for the protection of agricultural lands. Absent the clear ruling to the contrary, the goals and the rules of LCDC remain in effect. The LCDC rules relating to churches on high value farm land, which are based on both Goal 3 and Goal 14 (prohibiting urban uses outside an urban growth boundary without exception) continue to apply. The Planning Director's approval of the Application was in error.

Furthermore, under DLCD regulations, the property in question is high value farm land. The soil is Class III, 19A-type soil which is considered prime soil if irrigated. The property is irrigated pursuant to the Water Right Certificate submitted and has been used to grow perennial crops (strawberries). Any new church construction would require the exception be taken to the Statewide Planning Goals both 3 and 14.

Finally, the review and approval of the applicants church is a land use decision under ORS 197.015(10) and permit under ORS 215.402. The county must determine whether the proposed church is a rural facility allowed in an EFU zone or an urban use which requires an exception, not only under OAR 660-33-130(2) but also under 1000 Friends v. LCDC/Curry County, 301 Or 447 (1986). For these reasons, the Site Application should have been reviewed with a Type II review process rather than a Type I review process. Legal judgment was required. LDC 41.030B.

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VI. CONCLUSIONS

A. The property is Class III soil, 19A-type soil, zoned EFU-CG, and has been used in the past for the profitable production of agricultural products, including strawberries, and has water rights upon the property.

B. The proposed use has not been reviewed properly pursuant to LDC Article 41 nor has it been reviewed in relation to OAR Chapter 660, ORS Chapter 197 and Chapter 215 and an exception has not been taken to Goals 3 and 14 of the Statewide Planning Goals. The current DLCD Rules and Regulations in relation to exception requirements have not been met.

C. The property is high value farm land and the use of a church upon the property has not been reviewed and exceptions have not been taken pursuant to OAR, ORS and LCDC requirements.

VII. ORDER

Based upon the findings and conclusions herein, the Commercial/Industrial Site Plan Application for The Church of Jesus Christ of Latter Day Saints is hereby denied.

DATED this 2nd day of ~~July~~ October, 1997.

Klamath County Board of Commissioners

Al Switzer, Chairman

William R. Garrard

Out of Office Today

M. Steven West

32600

APPROVED AS TO FORM:

Reginald R. Davis
Klamath 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 of the date of the decision. 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.

STATE OF OREGON: COUNTY OF KLAMATH ss.

Filed for record at request of Klamath County B.O.C. the 3rd day of October A.D. 19 97 at 2:02 o'clock P.M., and duly recorded in Vol. M97, of Deeds on Page 32594.

Return: Commissioners Journal Bernetha G. Letsch, County Clerk

FEE No Fee By Kathleen Rossi

7. ORDER