

BEFORE THE HEARINGS OFFICER KLAMATH COUNTY, OREGON

In the Matter of the Request for a
Conditional Use Permit by

NORMAN and DEBRA FOWLER,

Applicant.

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)
) CUP 84-97
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) ORDER
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A. NATURE OF THE REQUEST:

The applicant wishes to establish a home as a use not in conjunction with farm use on property generally located east of Chiloquin. This request was heard by the Hearings Officer February 6, 1998 pursuant to Ordinances 24 and 44. The request was reviewed for conformity with Land Development Code Article 54 and with O.R.S. 215.243.

B. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neal G. Buchanan. The applicants appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl and the recording secretary was Karen Burg. Witnesses offering written material regarding the application are identifiable from each of the Exhibits referred to in Paragraph 5 hereof.

C. LOCATION:

The property under consideration is generally located 8.2 miles east of Chiloquin, South of the Sprague River Road being a portion of Section 35, Township 34, Range 8 EWM Tax Account #3408-3500-1200.

D. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The parcel is 18.98 acres in size. Land use and lot sizes in the area are similar to that proposed by this application. Residential land use and similar lot sizes are also found within one mile of this project. Fire protection is available from C/AL RFD.

E. PROCEDURAL STATUS:

The matter was originally heard by Hearings Officer Michael Brant and Denied. Thereafter an appeal was taken to the Board Of County Commissioners. The Board remanded the matter in part due to receipt of the correspondence received (Exhibit N)

F. EVIDENCE RECEIVED:

Exhibits A (the Staff Report) through M were previously received, and in addition Exhibit N (a letter from Brent Lake of Oregon DLCD) was received.

G. FINDINGS:

From a review of the evidence, it appears that the approval criteria as set out in Code Article 54 have been satisfied.

The Hearings Officer finds this application demonstrates that the parcel under review:

1. Does not already have an existing dwelling.

The parcel is presently undeveloped.

2. Will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.

The surrounding parcels are found to be developed to rural residential use. The proposed non-farm residence will not interfere with on-going use as these adjacent properties and geographic boundaries provide a buffer/setback from agricultural management practices and small private pasturage may be used to support limited large animal use for the parcel. The permit holder has proposed as a condition of this approval to file a restrictive covenant which will prohibit the permit holder and successors in interest from filing complaint concerning valid farming practices on nearby lands. The Hearings Officer finds this will mitigate impact to farm operations.

3. Is situated upon land generally unsuitable for the production of farm crops and livestock considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract.

The non-farm parcel is substantially smaller than the 80 acre size and is therefore thought not appropriate for commercial farm use. The Hearings Officer finds this non-farm parcel size unsuitable

for commercial agricultural use due to its small size, and the testimony of the applicant stating a farm income suitable to support a family cannot be generated on this property. Applicant previously presented evidence that the cost to convert the property to agricultural use would be prohibitive (Exhibit I) in addition to applicant's testimony to the same fact.

4. Is compatible with farm use and is consistent with state agricultural land-use policy which is designed to conserve agricultural lands.

The analysis of surrounding properties and their use indicates the size of the proposed parcels and the proposed use as large lot rural-residential is compatible with the predominant adjacent land uses as the existing residential density of the area will not be markedly increased.

5. The dwelling will be sited on a parcel created before January 1, 1993.

The parcel was so created.

6. Does not alter the stability of the overall land use pattern of the area.

The overall land use of part of this area is found to be large lot rural residential and commercial farming. The land use pattern of the area will not be modified as the residential intensity will be only marginally increased.

7. Access to the parcel is available and adequate.

Access to the parcel is from a paved road, Sprague River Highway. Use of the road will not interfere with farm practices.

8. ORDER:

Therefore, it is ordered the request of FOWLER for CUP 84-97 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.

2. This CUP will expire two years from the date below unless utilized or an extension is approved by the Planning Director.

DATED this 20th day of February, 1998.

Neal G. Buchanan
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 33.030 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 Hearings Officer the 23rd day
of February A.D., 19 98 at 1:39 o'clock P.M., and duly recorded in Vol. M98
of Deeds on Page 5774

Return: Commissioners Journal

By Bernetha G. Letsch, County Clerk
Kathleen Rose

FEE No Fee