

BEFORE THE HEARINGS OFFICER KLAMATH COUNTY, OREGON

In the Matter of CUP 12-98 and LP 6-98)
 for KENNETH L. and PATRICIA A. DENCER,)
 TRUSTEES OF THE DENCER FAMILY TRUST to)
 Establish Use Not In Conjunction With) LP 6-98
 Farm Use and Divide The Property,) CUP 12-98
)
)
)

ORDER

TRU-LINE SURVEYING for DENCER FAMILY)
 TRUST,)
 Applicant.)

1. NATURE OF THE REQUEST:

The applicant wishes to establish use as what is referred to as the Great Western Railroad Museum, not in conjunction with farm use on a portion (13.7 acres) of a parcel of real property in or near Merrill, Klamath County, Oregon. Also considered was the request to partition the parent 76.7 acres into parcels of 63.0 and 13.7 acres. This request was heard by the Hearings Officer March 20, 1998, pursuant to Ordinances 44 and 45.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neal G. Buchanan. The applicant appeared through Dennis Ensor and Fred Kepner and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl. The Recording Secretary was Karen Burg.

3. LOCATION:

The property under consideration is located east of Main Street, north of the UPRR, and south of Lost River, Merrill, Klamath County, Oregon. It is described as a portion of the N 1/2 Section 12, Township 41S, Range 10 EWM (Tax Accounts # 4110-12-400 and 500).

4. RELEVANT FACTS:

The property has an implementing zone of EFU-C. The parent property is 76.7 acres in size and may be under farm tax deferral. 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 this project. Fire protection is provided by Merrill Rural Fire Protection District.

5. FINDINGS:

All evidence submitted as the Staff Report, Exhibits B through E, and offered testimony show that the approval criteria as set out in Code Article 54 and 45 has been satisfied.

The Hearings Officer finds this application:

1. Is compatible with farm use because:

The analysis of surrounding properties and their use indicates the size of the smaller parcel and a museum site is compatible with the predominant adjacent land uses as the existing density of the area will not be markedly increased. The applicant has demonstrated the small parcels under consideration here are not considered commercial agricultural parcel size due to small size.

2. 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. The proposed non-farm uses will not interfere with the on-going use as sufficient lot area and geographic boundaries provide a buffer/setback from agricultural management practices. 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. Does not alter the stability of the overall land use pattern of the area because:

The overall land use pattern 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 be marginally increased.

4. Is situated upon generally unsuitable land 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 because:

The proposed non-farm parcels are smaller than the 80 acre size required by HB 3661 and are therefore thought not appropriate for commercial farm use. The proposed museum is to be located on property with soil SCS ratings of Henley Loam (26) Class IVw. The Hearings Officer finds the non-farm parcel size, despite classification as class 4 soil, 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.

5. Partitions creating parcels for non-farm uses are reviewed per the criteria set out in L.D.C. Article 45 and section 54.090.

The Hearings Officer finds this partition conforms to these criteria as set out below:

1. The parcels are created for proposed non-farm uses. The land is not viable for commercial agriculture since they are less than 80 acres.

2. Access to the parcel is from Main Street, Merrill, a paved road. Use of the road will not interfere with farm practices. The immediate access to the museum property is to be by proposed utility and access easement. Adjacent landowners (such as Merrilees Oil) have not expressed concern regarding this access proposal.

6. ORDER:

Therefore, it is ordered that the request of DENCER for CUP 12-98 and LP 6-98 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. LP 6-98 shall not be filed nor shall a building permit for a non-farm use be issued under this order until the applicant shall notify the County Assessor that the lot or parcel is no longer being used as farmland, and applicant provides the Planning Department with evidence parcel 1 has been disqualified for valuation for farm use, and that any additional tax penalty imposed by the County Assessor has been paid.

3. CUP 12-98 will not be effective until LP 6-98 is filed in the office of the County Clerk, and will expire two years later unless utilized or extended.

4. LP 6-98 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing, and will expire one year from the date hereof unless so filed.

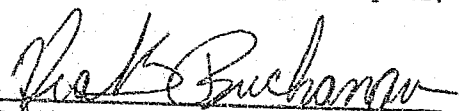
5. A "scrap operation" as defined by Article 11 is not permitted by this approval.

6. Prior to moving any museum assets to the property:

a. Development of the proposed museum on Parcel 1 is subject to Site Plan Approval via Article 41, and a Site Plan prepared pursuant thereto is to be approved by the Site Plan Review Committee; and

b. A development permit for a structure or structures must be issued by the Building Department.

DATED this 9 day of April, 1998.


NEAL G. BUCHANAN,
Deputy 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 Sections 33.030 of the Klamath County Land Development Code, together with the fee required within SEVEN DAYS following the mailing date of this order.

REQUIREMENTS FOR FINAL APPROVALPartition No. LP 6-98/Dencer

NOTE: THIS APPLICATION WILL EXPIRE ONE YEAR FROM THE PRELIMINARY APPROVAL DATE IF A TIME EXTENSION IS NOT MADE PRIOR TO THAT DATE.

FINAL PLAT REQUIREMENTS (Per Section 45.110 of the Land Development Code)

- A. Original Drawing - The original drawing of a partition plat shall be made in permanent black India type ink on 7 mil mylar, 18 inches by 24 inches in size with an additional 3 inch binding edge on the left side. The plat shall be of such a scale as required by the County Surveyor. The lettering of the approvals, the affidavit of the surveyor and all other information shall be of such a size of type as will be clearly legible, but not part shall come nearer any edge of the sheet than 1 inch. The original drawing shall be recorded in the County Clerk's office.
- B. Copy - One exact copy of the original plat made in permanent black India type ink or silver halide permanent photocopy on minimum 4 mil mylar, 18 inches by 24 inches in size shall be submitted to the Planning Director along with the original plat.
- C. Information shown on final plat:
 1. The partition number.
 2. The name of the person for whom the partition was made.
 3. Signature blocks for the following:
 - a. Planning Director;
 - b. County Surveyor;
 - c. County Public Works Director (if applicable);
 - d. County Clerk;
 - e. Owner and contract purchaser of the property (if applicable).
 4. All requirements of ORS 92.050, 92.070(1), and ORS 209.250 where applicable.
 5. Street names adjacent to the partition.
 6. Water rights recording number. If a water right is not appurtenant to the property, a statement signed by the owner indicating such shall be shown on the plat.
- D. Supplemental information to be filed with the final plat:
 1. A preliminary title report or partition guarantee issued by a title company in the name of the owner of the land and prepared within 30 days prior to submittal of the final plat showing all parties having any record title interest in the premises and what interest they have.
 2. A completed water rights statement if a water right is appurtenant to the property.

OTHER REQUIREMENTS:

1. Applicant is required to pay all ad valorem taxes, any additional taxes, special assessments, fees, interest and penalties prior to partition being recorded.
2. The partition is exempt from surveying requirements due to parcel size.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Planning Dept. the 9th day
 of April A.D., 19 98 at 2:31 o'clock P M., and duly recorded in Vol. M98
 of Deeds on Page 11618.

FEE None

Bernetha G. Letsch, County Clerk
 By Kathleen R. Rasmussen