

'98 SEP -8 A11:19

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for a Conditional Use)

) ORDER

Permit by: Crater Lake for WOLFF.) CASE NUMBER CUP-72-98

)

1. NATURE OF THE REQUEST

The applicant, has applied for a permit to build a NON FARM HOME on 139.85 acres Zoned EFU-CG. This request was heard by the hearings officer September 4, 1998. The request was reviewed for conformance with Klamath County Land Development Code Article 54.

2. NAMES OF PARTICIPANTS

The hearings officer reviewing this application is Joan-Marie Michelsen. The applicant appeared and offered testimony. The planning department was represented by Kim Lundahl. The recording secretary was Karen Burg.

3. LOCATION AND GENERAL DESCRIPTION OF PROPERTY

The property in question is pors Secs. 29 & 30 T 35S R7E.

The access to the property is off of Modoc Point Rd.

Fire protection is provided by the Chiloquin-Agency Lake Rural Fire Protection District.

The land is presently undeveloped and unused for any commercial uses.

Sewerage will be provided by a septic system.

The soils are class IV.

The water will be provided by a well.

The area is zoned EFU-CCG/AG.

4. MATERIALS CONSIDERED

All evidence submitted by the applicant and located in the Staff Report was considered as was the oral testimony given at the hearing on this matter.

5. FINDINGS

The Hearings officer FINDS AS FOLLOWS:

- a. The development of this type of structure is not included in the permitted uses for this zoning, however the LDC permits residences subject to certain findings.
- b. The parcel in question was legally created.
- c. Approval of the requested structure as conditioned will not create conditions or circumstances that are contrary to the purposes or intent of county planning laws.
- d. Active resource use has occurred on the subject property or the adjacent properties. The property is viable for agriculture.
- e. Fire protection is provided and the threat to spreading fire to resource productive properties is mitigated.
- f. The location of a residence as conditioned on the parcel will not destabilize the existing land use pattern of the area due to the proximity of the three small parcels adjacent to the location of the residence.

- g. The proposed structure will located on land that is generally unsuitable for timber or agriculture considering the size of the parcel, the soil, the flooding and high water table, and the present vegetation.
- h. As condition to this approval, a written covenant will be recorded which recognizes the rights of adjacent and nearby land owners and operators to conduct farm and forest operations consistent with currently accepted farming practices and the Forest Practices Act of Oregon.
- i. There is no dwelling presently sited on this parcel.
- j. Road access is sufficient.
- k. The property does have wetlands on it and a wetland study will be necessary to determine if it is possible to site a house in such a way as to not diminish the value of the property for agriculture.
- l. The property at present does not meet the conditions necessary to approve a Lot of Record dwelling but it will after the conditions are met.

6. ORDER

Therefore, it is hereby ordered that the applicants request to develop a NON FARM HOME is approved subject to the following conditions:

- a. That approval is obtained for on-site sewage disposal and that the applicant provides proof of clearance from the Environmental Health Services Division and Building department within two (2) years following the date of this order, or obtain an extension of time, or this approval will be void.
- b. That the dwelling be sited and constructed in such a way as to fully comply with Article 59 of the LDC. The applicant shall establish the location of the 100 year flood plane and make all possible provisions to not build within it.
- c. That the applicant files a restrictive covenant with the county clerk prohibiting the permit grantee and successors in interest from dividing the property or filing any complaint of any type or kind concerning the presently accepted resource management practices and farming uses that may occur on nearby lands devoted to commercial or other resource use.
- d. The applicant shall establish through professional analysis the location of any wetlands occurring within 400 feet of Modoc Point Hwy. No structures shall be built within these wetland areas without complying fully with state, local and federal regulation of wetlands and their filling.
- e. Any dwelling shall be located within 300 feet of Modoc Point Hwy.
- f. Before any development of any type is done the property in its entirety must be taken out of farmland deferral as per 54.080(D)(1).
- g. Before any development of any type is done all parcels or lots in the tract shall be consolidated into a single lot or parcel as per 54.080(D)(3). And the applicant shall file a statement stating that the property shall not be divided in the future.

Dated this 4th day of September, 1998

Joan Marie Michelsen
Hearings Officer

NOTICE OF APPEAL RIGHTS

Your 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 (7) following the mailing date of this order.

STATE OF OREGON: COUNTY OF KLAMATH : ss.

Filed for record at request of Klamath County the 8th day
of Sept A.D. 19 98 at 11:19 o'clock A M., and duly recorded in Vol. M98
of Deeds on Page 32987.

FEE none Ret: Commissioners Journal

Bernetha-G. Letsch, County Clerk
By Dorlene M. Henderson