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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request)
for a Conditional Use Permit) ORDER
) CASE NUMBER CUP-87-98
by: Crater Lake School.

1. NATURE OF THE REQUEST

The applicant, has applied for a permit to build a NON FARM HOME and clarify the existing permit for a co-ed high school emphasizing agricultural and environmental studies on 458 acres of ranch property. This request was heard by the hearings officer in a series of hearings. The request was reviewed for conformance with Klamath County Land Development Code Articles 54, and its associated sections including 64 and 71.

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. The applicant was represented by Doug Osborne and Mr. Hoffman an adjacent property owner was represented by Mike Rudd. Additional testimony was offered by several people, none of which were directly effected by the activities on the property.

3. LOCATION AND GENERAL DESCRIPTION OF PROPERTY

The property in question is specifically described as
SW 4 LY of Road Acres 142.20, TWP 36 R11, Blk Sec 22,
Tract NE 4 acres 155.64 and Tract SE 4 Acres 160.

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The access to the property is via a private road off of Sprague River Highway.

Fire protection is provided.

The land is presently developed and is used for commercial uses including agriculture and education.

Sewerage will be provided by a septic system.

The soils are class mixed.

The water is provided by a well.

The area is zoned EFU.

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 hearings 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 structures with mitigation 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 large enough for legitimate agriculture, but will also accommodate the existing use as a school without interfering excessively with the dominant agricultural use.
- e. Fire protection is provided and the threat to spreading fire to resource productive properties is mitigated.
- f. Road access is sufficient if Mr. Hoffman continues to allow access off of his easement.

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- g. The old driveway which was located closer to Mr. Hoffman's property has been abandoned and shall not be used in the future.
- h. Applicant has started the process of fencing off their property from adjacent properties.
- i. The school has an active ag/environmental educational component that is compatible at the current scale with EFU zoning.
- j. The issue of relocating the road is beyond the scope of this permit.
- k. The applicant has requested a permit to use and keep the modular home which is currently sited on the property under a farm management dwelling permit, which is not applicable to the real uses of the building.
- l. The applicant has requested a permit to reconstruct a barn and to build a shed for tack and tools. The barn will be used at some times for recreational purposes as well as traditional barn uses.
- m. There is existing sewerage and water for the facility and the dwelling.
- n. Submitted findings of fact numbers 1-19 are accepted as set forth below.

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1. Robert Hoffman purchased his property on September 1, 1978. At that time the following structures and utilities were present in its current location:

- a. Domestic well.
- b. Electric power.
- c. Storage building.
- d. Septic system.
- e. Foundation.

2. Since the purchase of the property, Robert Hoffman has worked to prepare his land for building a home on site and is preparing to place the home on the site within the next two years. Mr. Hoffman has installed the following structures and utilities to his home site:

- a. Installation of phone line.
- b. Water lines.
- c. Domestic pump.
- d. Building pump house.

3. Mr. Hoffman uses his property for the purpose of raising bulls and for a tree farm.

4. Mr. Hoffman's property is directly adjacent to the applicant's property. Mr. Hoffman's home site is approximately 50 feet from the common property line.

5. Applicant obtained a CUP (CUP 108-96) on January 3, 1997. The CUP allowed the applicant to use the property for a school.

1. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. The school has used as an access the road located on Mr. Hoffman's property.

7. The school is a commercial activity on EFU zoned property. The surrounding properties are EFU zoned.

8. The school applied to the Klamath County Planning Department to place a manufactured home upon the property. The application was made under a farm management dwelling.

9. After the farm management dwelling application was approved, the manufactured home was placed on the property approximately 150 feet from the common property line.

10. The planning department received complaints indicating that the manufactured home was being used as office space, for administration, as living quarters for a medical director and as an overflow dorm for female students.

11. Applicant obtained from the Department of Human Resources, a permit to use the manufactured home and the capacity was for four students.

12. After a citation by the Klamath County Planning Department, the hearings officers required that a separate Conditional Use Permit application be submitted for the manufactured dwelling.

13. The application was submitted for a Conditional Use Permit for the manufactured home to be used in conjunction with the school, as well as to place additional structures upon the property. The request for additional structures did not contain a site plan nor were the locations delineated.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. As stated by the school master, the additional buildings had "not been drawn yet."

15. Both students from the school and cattle which were grazing upon the school property have trespassed upon Mr. Hoffman's property in the past.

16. The commercial use of the applicant's property has forced a significant change in Mr. Hoffman's use of his EFU zoned property. Due to trespassing upon the property by students, Mr. Hoffman has been forced to take significant steps to prevent fire on his property, as well as protecting the children from the bulls which he raises on the property. The trespassing increases Mr. Hoffman's liability in regards to the bulls and the children.

17. The current access site and location of the manufactured dwelling affects Mr. Hoffman's property due to increased travel, dust, nuisance, noise and light. The increased use of the road for the commercial activity interferes with Mr. Hoffman's peace and enjoyment of his property.

18. No site plan was submitted with the Conditional Use Permit application.

19. The Conditional Use Permit Application does not address any mitigating circumstances or activities to ensure Mr. Hoffman's peaceful use and enjoyment of his property.

1. ORDER


Therefore, it is hereby ordered that the applicants request to develop a barn, tool/tack shed and to continue the placement of the existing modular house is approved subject to the following conditions:

- a. That the applicant may keep the present modular structure which is marked "new house" on exhibit H in its present location. It may not be relocated on the same property without a new permit.
- b. That no further development be done to the south (where arrows pointing) of line on Exhibit H which is marked as the "limit of site location.
- c. Other than the above limitation, the barn and tool/shed shop may be sited anywhere near the currently developed area and outside of the irrigated lands.
- d. The abandoned driveway shall not be used.
- e. The applicant shall continue the fencing project and complete fencing the south (Hoffman) side of the property by January 25, 1998. The fencing shall match that which has already been installed by the applicant as depicted on exhibit I1 marked "fence."
- f. The applicant shall not allow persons from their facility to trespass on Mr. Hoffman's land.
- g. The modular structure may be used for administrative, farming, and educational purposes and for temporary housing of adults and staff. It shall not be used as a dormitory or sleeping accommodation for the children.

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- h. The applicant shall not locate any road access in the future closer to Mr. Hoffman's property without permit or his permission.
- i. The applicant shall use reasonable care to insure that the use, enjoyment, and productivity of Mr. Hoffman's property is not impinged upon.
- j. That the applicant complies fully with fire safety and other siting standards of the Land Use Code as set out in Article 69 of the LDC.
- k. That any roads or buildings other than the barn, shed and modular house discussed above shall require a new/amended permit.
- l. The parcel shall be checked against the Division of State Lands (DSL) most current wetlands inventory maps and a determination shall be made as to whether or not a wetland is located on the property. If there is a DSL recognized wetland on the portion of the parcel proposed for development the conditions of LDC 54.050(G) shall be met before construction begins.

Dated this ^{22nd} day of ^{December} November, 1998


Joan-Marie Michelsen
Hearings Officer

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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 33.004 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 28th day
of December A.D., 19 98 at 1:55 o'clock P. M., and duly recorded in Vol. M98
of Deeds on Page 47279

FEE No Fee

By Bernetha G. Letsch, County Clerk

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