

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application)	
by Butch and Beverly Higgins)	ORDER NO. 118-00
for a Conditional Use Permit to Operate)	
a Dog Kennel Home Occupation on)	FINDINGS AND CONCLUSIONS
Property Zoned Primary Forest (PF-76))	

WHEREAS, on August 21, 2000, Butch Higgins and Beverly McMillan, filed an application for Conditional Use Permit to operate a dog boarding and training facility (kennel) on a 73.78 acre site located at 28414 Parkdale Road, Rainier, Oregon, which is zoned as Primary Forest (PF-76), and has tax account numbers 7218-000-01401 and 7219-000-00200; and

WHEREAS, on August 29, 2000, said Application was deemed complete; and

WHEREAS, on October 2, 2000, the Columbia County Planning Commission held a hearing on the application, heard testimony in favor and in opposition of the Application, and continued the hearing to November 6, 2000; and

WHEREAS, on November 6, 2000, the Columbia County Planning Commission reconvened, heard additional testimony, and deliberated on the application, the Columbia County Planning Commission voted to deny the application for a conditional use permit; and,

WHEREAS, on November 21, 2000, Planning Commission Chair, Jeffrey Vannatta, signed Final Order CU 01-14, denying said application; and

WHEREAS, on November 28, 2000, Beverly Higgins appealed the Planning Commission's denial of Conditional Use Permit CU01-14, to the Columbia County Board of County Commissioners; and

WHEREAS, on December 20, 2000, the Board of County Commissioners held a de novo hearing on the application; and

WHEREAS, at the hearing, Glen Higgins, Chief Planner for the Columbia County Land Development Services Department read the staff report into the record which listed the criteria to be considered and contained the Department's proposed findings, conclusions and recommendations; and

WHEREAS, David Brian Williamson, Attorney for Butch and Beverly Higgins, and Beverly Higgins, testified in favor of the application, and Karen Vance, and Kenneth Vance, neighbors, testified in opposition of the application; and

WHEREAS, the following Exhibits were introduced into the record:

EXHIBIT 1- Legal Counsel's File, including the following:

- 1) Notice of Public Hearing (Publication);
- 2) Notice of Public Hearing (Property Owner Notice);
- 3) Affidavit of Mailing 11/30/00;
- 4) Affidavit of Publication 11/30/00;
- 5) Board Communication dated December 15, 2000, with the following attachments:
 - A) Appeal/Referral filed by Richard and Beverly Higgins, on November 27, 2000;
 - B) Staff Report dated December 14, 2000, to the Board of County Commissioners;
- 6) Board Communication from Todd Dugdale dated November 28, 2000, with the following attachments:
 - A) List of interested parties to receive notice;
 - B) Hearing notice for Planning Commission dated August 31, 2000;
 - C) Planning Commission Final Order CU 01-14 dated November 21, 2000;
 - D) Staff Report to Planning Commission dated September 22, 2000;
 - E) Conditional Use Permit Application dated August 21, 2000 with attached location map; address map; 2 zoning maps; and topography map;
- 7) Minutes of October 2, 2000, Planning Commission Hearing;
- 8) Minutes of November 6, 2000, Planning Commission Hearing;
- 9) Letter from David Brian Williamson;
- 10) Referral and Acknowledgment from Rainier Fire District;
- 11) Referral and Acknowledgment from Oregon Fish and Wildlife (East);
- 12) Referral and Acknowledgment from Building Officer;
- 13) Referral and Acknowledgment from County Roadmaster;
- 14) Referral and Acknowledgment from Cynthia Zemaitis, Rainier CPAC;
- 15) Referral and Acknowledgment from Natural Resources Conservation Service;
- 16) Referral and Acknowledgment from Columbia 911;
- 17) Referral and Acknowledgment from Columbia County Sanitarian;
- 18) Referral Contact List;
- 19) Summary of Points submitted by Butch Higgins;
- 20) Letter from Debra Kramer dated September 30, 2000;
- 21) Letter from Kenneth and Karen Vance dated September 28, 2000;
- 22) Petition in opposition to Home Occupation Permit received by Planning Commission at October 2, 2000, Planning Commission Hearing;
- 23) Letter from Connie McPhee dated October 10, 2000;
- 24) letter from John and Harriet Curtis dated October 9, 2000;
- 25) Letter from Kenneth and Karen Vance dated October 4, 2000;
- 26) Letter from Margaret Cemulini dated October 8, 2000;
- 27) Letter from Randy and Dale Thomas dated October 11, 2000;
- 28) Revised permit application received October 12, 2000;

- 29) Conditional Use Permit application submitted by Butch Higgins and Beverly McMillan dated August 21, 2000;

EXHIBIT 2- Panoramic photo of property submitted by Glen Higgins;

EXHIBIT 3- Assessor's map submitted by David Brian Williamson;

EXHIBIT 4- Topographical Map submitted by David Brian Williamson; and

WHEREAS, having heard testimony and reviewed the evidence presented, the Board of County Commissions closed the public hearing and deliberated on the matter;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts Findings No. 3, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 21, and 25 of the Amended Land Development Services Staff Report to the Board of County Commissioners, dated December 14, 2000, which is attached hereto as Attachment "A," and is incorporated herein by this reference.
2. The Board of County Commissioners adopts supplemental findings which are attached hereto in Attachment "B," and are incorporated herein by this reference.
3. The application of Butch and Beverly Higgins, for a Conditional Use Permit is **APPROVED, subject to the following conditions:**
 - A) All activities and storage of materials associated with the home occupation shall be conducted entirely within the on-site residence or kennel facility. Training may occur outside, but all dogs must be controlled and remain on applicants' property, and further not allowed to run freely.
 - B) Prior to the issuance of a building permit, the applicant shall obtain an access permit from the County Road Department for any new driveways intersecting Parkdale Road from the subject property.
 - C) The kennel shall be located within the confines of the existing barn, as depicted on the preliminary plans.
 - D) Prior to final approval and the issuance of any permits, the applicant shall obtain authorization from the Land Development Services Sanitation Division for the connection of the proposed use to the site's existing subsurface septic system or construction of a specialty septic system.
 - E) No new structures, nor any additions to existing structures, are permitted as a result of this conditional use permit alone.

- F) All restrictions pertaining to the home occupations as set forth in the Columbia County Zoning Ordinance shall be strictly observed.
- G) All provisions of the Oregon Uniform Building Code and Uniform Fire Code must be met before the business may occupy or operate in the building, and must be continuously observed at all times while the business is in operation.
- H) Within two years from the date of final approval and the issuance of a building permit for the proposed use, the applicant shall apply for a permit review to determine whether the use has exacted any perceived negative impacts on the neighborhood, and how those impacts might be mitigated. That review shall be conducted by the planning director or his designee, and if negative findings are made, the director may refer the permit to the Planning Commission for a public hearing.
- I) This permit shall become void two (2) years from the date of final decision if development has not begun. An extension of the permit may be granted by the planning director if requested in writing before the permit's expiration and if the applicant was not responsible for the failure to begin development.
- J) Applicants shall soundproof the kennel by installing weather and sound insulation in the barn, sound barriers outside of the barn, and shall otherwise attempt to keep barking and other kennel related noise from emanating from the barn.

DATED this 10th day of January, 2001.

Approved as to Form

By: Sarah Tyson
Office of the County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: John M. Verhaard
Chair

By: [Signature]
Commissioner

By: [Signature]
Commissioner

ATTACHMENT "A"

CU 01-14

On-Appeal To BOC

COLUMBIA COUNTY BOARD OF COMMISSIONERS

Conditional Use Permit Staff Report

Home Occupation: Dog Kennel In PF-76 Zone

"ON-APPEAL"

12/14/00

FILE NUMBER: CU 01-14

APPLICANT: Butch Higgins and Beverly McMillan
28414 Parkdale Road
Rainier, Oregon 97048

PROPERTY OWNER: Same as applicant

PROPERTY LOCATION: 28414 Parkdale Road, Rainier, Oregon

REQUEST: To operate a canine boarding and training facility from an existing homesite located in the PF-76 zone

TAX ACCT. NUMBER: 7218-000-01401 and 7219-000-00200

ZONING: Primary Forest (PF-76)

APPLIC'N. COMPLETE: August 29, 2000

150 DAY DEADLINE: January 26, 2001

WAIVER SIGNED?: No

BACKGROUND:

This application was considered by the Planning Commission at a public hearing on October 2, 2000 and carried over to November 6, 2000, where the application was denied. The applicant subsequently appealed that decision to the Board of Commissioners.

The applicant requests approval to operate a dog training and boarding facility for Labrador retrievers. The facility will be operated from their existing homesite located at 28414 Parkdale Road, Rainier, Oregon. The subject property is 73.78 acres in size laying between Parkdale and Doan County Roads and is zoned Primary Forest (PF-76). The homesite is located on that portion of the site described by the county assessor as Tax Lot 7218-000-01401.

Existing improvements include a single-family dwelling and related uses including a barn (e.g., driveway, outbuildings, etc.). The remainder of the site is pasture and/or woodlands. Access is from Parkdale Road, a

county road in fair condition. A new, alternate driveway providing direct access to the proposed boarding/training facility is shown on the submitted plot plan; and must be approved by the county roadmaster prior to final approval and the issuance of a building permit.

Originally, the applicant was to build a dog kennel facility between the existing barn and the house. Later, the applicant changed the location of the facility to within the existing barn. The staff report and findings for the Planning Commission still held that the building (dog kennel) was not a structure normally associated with residential purposes. Upon reconsideration staff's opinion changed after review of Oregon Revised Statutes for Home Occupations, and now considers the barn with a kennel facility enclosed as a structure normally associated with residential use in the PF-76 zone. According to the applicants, the use will accommodate up to 30 dogs and employ as many as four, including the applicants and possibly two others.

Water is provided from a private well. Sewage is treated by an existing subsurface septic system. The submitted plot plan illustrates the applicant's intent to install a separate subsurface septic system to facilitate the proposed use.

Records show that the site is unaffected by flood plain or wetlands and that it is located within the Rainier Rural Fire Protection District.

FINDINGS:

The following sections of the Zoning Ordinance are pertinent to this application:

"Section 503 Conditional Uses: In the PF zone the following conditional uses and their accessory uses are permitted subject to the provisions of Sections 504 and 505. A conditional use shall be reviewed according to the procedures provided in Section 1503.

.11 Home Occupation."

Finding 1: In the PF-76 zone, a home occupation is a residential use and is permitted as a conditional use.

The applicant maintains that the proposed facility qualifies as a farm use pursuant to Oregon Revised Statute (ORS) 215.203(2)(a) and, therefore, is allowed: farming is permitted outright in forest zones. Staff does not concur with this assessment since the proposed use is for the boarding and training of canines, which are not livestock. Moreover, any reasonably prudent person would conclude that the use does not constitute animal husbandry, but is clearly a kennel as defined by CCZO section 100.41: "Any lot or parcel or premises on which [four] or more dogs or cats of more than [six] months of age are kept commercially for board, propagation, or sale."

Notwithstanding the above, if this application demonstrates compliance with the review standards set forth within the remainder of this report, it may be permitted as a home occupation.

Section 504 of the Zoning Ordinance provides as follows:

"Section 504 All Conditional Uses Permitted In The PF Zone Shall Meet The Following Requirements:

- .1 The use is consistent with forest and farm uses and with the intent and purposes set forth in the Oregon Forest Practices Act."

The Oregon Forest Practices Act (ORS Chapter 527) includes the following:

"**527.630 Policy.** (1) ...it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forest land for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water and fish and wildlife resources that assures the continuous benefits of those resources for future generations of Oregonians."

Finding 2: The proposed development is within the confines of the existing homesite. No development within the forested portion of the property is proposed. Therefore, this development assures the continuous growing of forest products or resource use.

Continuing with Zoning Ordinance section 504:

- "2 The use will not significantly increase the cost, nor interfere with accepted forest management practices or farm uses on adjacent or nearby lands devoted to forest or farm use."

Finding 3: The effect that the proposed use will have on surrounding farming and forestry operations should be negligible since the kennel will be limited to the property's existing homesite near Parkdale Road, and other residences.

Continuing with Zoning Ordinance section 504:

- "3 The use will be limited to a site no larger than necessary to accommodate the activity and, as such will not materially alter the stability of the overall land use pattern of the area or substantially limit or impair the permitted uses of surrounding properties. If necessary, measures will be taken to minimize potential negative effects on adjacent forest lands."

Finding 4: See finding Nos. 2 and 3. above.

Continuing with Zoning Ordinance section 504:

- "4 The use does not constitute an unnecessary fire hazard, and provides for fire safety measures in planning, design, construction, and operation."

Finding 5: All fire-safety precautions will need to be strictly observed during the construction and operation of the proposed facility. Approval of this request shall be conditioned upon the applicant's adherence to all required fire-safety measures for structures in forest zones, including those set forth under Oregon Administrative Rules (OAR's) 660-006-0029 and 660-006-0035.

Continuing with Zoning Ordinance section 504:

"5 Public utilities are to develop or utilize rights-of-way that have the least adverse impact on forest resources. Existing rights-of-way are to be utilized wherever possible.

Finding 6: All public utilities are presently in place; no new ones are anticipated.

Continuing with Zoning Ordinance section 504:

"6 Development within major and peripheral big game ranges shall be sited to minimize the impact on big game habitat. To minimize the impact, structures shall: be located near existing roads; be as close as possible to existing structures on adjoining lots; and be clustered where several structures are proposed."

Finding 7: The proposed development site is not located within a major or peripheral big game range.

Home occupations are controlled by Zoning Ordinance Section 1507:

"1507 Home Occupations

Land Development Services or the County Planning Commission (or the County) may allow the establishment of a Type 1 or Type 2 home occupation in any zone that allows residential uses....

- .2 Type 2: A Type 2 home occupation is reviewed as a Conditional Use by the Planning Commission and may be visible to the neighborhood in which it is located. In addition to the general criteria in Subsection [sic] 1507.3, the following criteria shall apply to a Type 2 home occupation."

Finding 8: The proposed kennel is a Type 2 home occupation and thereby subject to the standards set forth under CCZO section 1507.2A. through C.

- A. Will be operated by a resident or employee of a resident of the property on which the business is located;"

Finding 9: According to the application's narrative, the home occupation will be operated by the applicants and possibly two others. The applicants reside on site.

Continuing with Section 1507.1 of the Zoning Ordinance:

"B. Will employ on site no more than five full or part-time persons;"

Finding 10: See Finding 9. above.

Continuing with Section 1507.1 of the Zoning Ordinance:

"C. Will be operated substantially in:

1. The dwelling; or
2. Other buildings normally associated with uses permitted in the zone in which the property is located; and"

Finding 11: The proposed canine boarding/training facility will be operated within in a structure that is to be constructed as part of the applicant's homesite. Since state law prohibits kennel operations on lands zoned for forestry, any structure utilized for such purposes is not one that is normally associated with the Primary Forest zone. It cannot be argued that the structure is for agricultural purposes, and thereby permitted outright, since the activity it supports does not qualify as a farm use pursuant to ORS 215.203(2)(a)—see paragraph 2 of Finding 1. Above for additional, related findings. This standard is not met.

Supplemental On-Appeal Finding 11: The kennel will be located inside an existing barn and not a structure that will be constructed. Therefore the existing barn is a use normally associated with uses permitted in the zone in which the property is located. This criteria is met.

Continuing with Section 1507.1 of the Zoning Ordinance:

"D. Will not unreasonably interfere with existing uses on adjacent land or with other uses permitted in the zone in which the property is located."

Finding 12: The proposed kennel site is within proximity of existing residences along Parkdale Road. Staff finds that the sounds typically generated by such a use could infringe upon the rights of nearby and adjacent property owners by compromising the relative tranquility that the neighborhood currently offers.

Supplemental On-Appeal Finding 12: Many comments were received from nearby or adjoining property owners to the subject property who had concern about the dog noise problem. Staff does not want to refute this testimony, but it seems unlikely that the dog kennel and training facility would "unreasonably" interfere with existing residential uses in the Primary Forest Zone, given the fact that the subject property is 73 acres in size, approximately ¼ mile wide by ½ mile long, or approximately 1300 feet wide by about 2,600 feet long. The existing uses on adjacent land to the subject property were primarily residential as observed by staff on 12/14/00. There were no livestock noted or farming practices observed on surrounding adjoining land during the

site visit on that day. The area is characterized by a wide open southwesterly sloping and gently rolling pastureland that is for the most part large units of land with little tree cover. The subject property is approximately 2,600 long by about 1300 feet wide between Parkdale and Doan County Roads and is surrounded by 11 tax lots on which there are 7 dwellings. The closest dwelling to the subject property is a newly sited uninhabited double wide mobile home at 28425 Parkdale approximately 400' directly to the north of the subject property and about 600 feet to the old barn where the kennel will be located. There are 2 other dwellings at 28306 and 28353 Parkdale that are approximately 500 feet distant from the subject property. These three dwellings are the closest to the subject property. Other dwellings are a much greater distance from the subject property. It should be noted that a target for high powered rifles was set up and had many bullet holes in it off Doan Road which borders on the southeastern corner of the subject property. The target would indicate that someone had been firing a rifle in the area of the property off Doan Road. It is staff's opinion that the proposed dog kennel home occupation would not "unreasonably" interfere with existing uses on adjacent land or uses permitted in the Primary Forestland (PF-76) Zone because there are relatively great distances involved.

Continuing with Section 1507 of the Zoning Ordinance:

- "2 The Commission may establish additional reasonable conditions of approval for the establishment of a home occupation under this section."

Finding 13: The Board of Commissioners may impose additional conditions, if the request is approved.

Continuing with Section 1507 of the Zoning Ordinance:

- "3 Nothing in this section authorizes the Commission to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established."

Finding 14: If approved, this proposal would result in the construction of a kennel within the Primary Forest zone. Since such facilities are not permitted on forest lands pursuant to Oregon Administrative Rule (OAR) Chapter 660, Division 006, this standard is not met.

Supplemental On-Appeal Finding 14: The above finding is incorrect. Home occupations are permitted on forest lands per ORS 215.448 which states "(1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. ..." In a forest zone such as PF-76 the home occupation is subject to criteria upon which findings have been made in the body of this staff report. The applicant will not be building any new structures to kennel dogs in, but will utilize the existing barn structure which is a building normally associated with farm use, a permitted use in the PF-76 zone. This criteria is met.

Continuing with Section 1507 of the Zoning Ordinance:

"4 The existence of a home occupation shall not be used as justification for a zone change."

Finding 15: A zone change has not been applied for, nor is one authorized under this request.

Conditional Uses are controlled by Zoning Ordinance Section 1503:

"1503 Conditional Uses:

.5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

A. The use is listed as a Conditional Use in the zone which is currently applied to the site;"

Finding 16: The PF-76 zone permits home occupations under CCZO section 503.11, "Conditional Uses."

Continuing with Zoning Ordinance section 1503.5:

"B. The use meets the specific criteria established in the underlying zone:"

Finding 17: The criteria listed in the zone have been shown to be complied with in the above findings.

Continuing with Zoning Ordinance section 1503.5:

"C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;"

Finding 18: The subject property is a 73-acre rectangle located with one end along Parkdale Road. Parkdale Road is a county road in fair condition. Slope (down) at the proposed development site is to the south and does not exceed five percent. Existing uses include a single-family dwelling and related improvements (e.g., septic, well, driveway), farming and forestry. All necessary public facilities and services are available and there are no outstanding natural features. These appear to make the site suitable for the proposed use.

Continuing with Zoning Ordinance section 1503.5:

"D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the

use."

Finding 19: See Finding 18 above.

Continuing with Zoning Ordinance section 1503.5:

"E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;"

Finding 20: The primary intent of the underlying zone in which the subject property is located (PF-76) is farming and forestry, and their related uses. The effect that the proposed use will have on such activities occurring in the area should be negligible since the kennel will be limited to the applicant's existing homesite adjacent to Parkdale Road. No additional farm or forest lands will be taken out of production. If the facility is approved, its construction shall be subject to the siting and fire-safety standards set forth under OAR's 660-006-0029 and 660-006-0035.

Continuing with Zoning Ordinance section 1503.5:

"F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;"

Finding 21: Policy 1. of the "Forest Lands" section of the county's comprehensive plan reads, in part: "Conserve forest lands for forest uses....." Since the proposed kennel will be situated within that portion of the subject property that is already committed to nonforestry uses, no forest land will be taken out of production.

Policy 1. of the "Economy" section of the comprehensive plan reads: "Encourage the creation of new and continuous employment opportunities." Policy 2. of that section reads: "Encourage a stable and diversified economy." Approval of this request would ensure compliance with those policies.

Continuing with Zoning Ordinance section 1503.5:

"G. The proposal will not create any hazardous conditions."

Finding 22: The proposed home occupation will not be hazardous as it will be subject to all state and local fire-safety standards for the construction of structures in forest zones. Compliance with state sanitary guidelines is controlled by the Oregon Department of Environmental Quality (DEQ) regulations. Prior to the issuance of a building permit, the applicant shall obtain authorization from the County Sanitarian to connect the proposed use to the site's existing subsurface septic system. NOTE: Section 222 of the Columbia County Zoning Ordinance restricts septic systems to one residential system per lot/parcel. A special septic system to treat dog waste from the facility could be designated and installed with correct permits.

Continuing with Zoning Ordinance section 1503:

- "6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Planning Commission."

Finding 23: A site design review may be required by the Planning Commission.

COMMENTS:

1. The county sanitarian has no objections to approval of the application as submitted and commented: "Dog kennel operation requires construction of sewage disposal system."

Finding 24: See staff's comments under Finding 22 above.

2. The Natural Resources Conservation Service stated: "Our board must meet to consider this [request]; we will return their comments to you by 9-22[-00]."
3. The county building official has no objections to approval of the application as submitted and commented, in part: "Will this have a noise problem with barking dogs[?]"

Finding 25: Within two years from the date of final approval and the issuance of a building permit for the proposed use, the applicant must apply for a permit review to determine whether the use has exacted any perceived negative impacts on the neighborhood, and how those impacts might be mitigated. That review shall be conducted by the planning director or his designee.

3. The fire chief of the Rainier Rural Fire Protection has no objections to approval of the application as submitted.

Other comments were received by the Planning Commission at the public hearing. Testimony in opposition to the application is public record and available in the minutes.

S:/Pc/2000/10-02-00 Meeting/Staff Reports/CU01-14

PLANNING COMMISSION DECISION:

A public hearing was held before the Columbia County Planning Commission on October 2, 2000 and was carried over to the November 6, 2000 hearing date, at which time the Planning Commission, after hearing and considering testimony from all concerned parties, and after considering all materials submitted, and after considering the Planning Commission staff report, **denied** the application by Butch Higgins and Beverly Millan for a home occupation to operate a dog kennel on a 73.78 acre parcel in the PF-76 zone for the following reasons:

1. Staff Report Finding # 11: The home occupation, a dog kennel, cannot be operated in the dwelling or other buildings normally associated with uses permitted in the zone where the property is located.
2. Staff report Finding # 12: The home occupation would unreasonably interfere with existing uses on adjacent lands.
3. Staff report Finding #14: A kennel is not a use permitted on forest lands.

APPLICANT'S REASONS FOR APPEAL:

The applicant maintains that, "The Planning Commission erred in finding that the application should be denied."
...

The reasons for appeal are:

1. Staff Report Finding # 11: The home occupation, a dog kennel, cannot be operated in the dwelling or other buildings normally associated with uses permitted in the zone where the property is located.

Reason: Farm use is allowed outright on forest lands (OAR 660-006-0025(3)(b)). A barn is a building normally associated with farm use. Applicants intend to operate within an existing barn on the property.

2. Staff report Finding # 12: The home occupation would unreasonably interfere with existing uses on adjacent lands.

Reason: The use will not unreasonably interfere with existing uses on adjacent lands. The adjacent lands are primarily large tracts of forest lands.

3. Staff report Finding No. 14: A kennel is not a use permitted on forest lands.

Reason: Applicants are not constructing a structure. They are using an existing structure, a barn, which is allowed outright in the zone.

ON-APPEAL FINDINGS:

1. Staff Report Finding # 11: The home occupation, a dog kennel, cannot be operated in the

dwelling or other buildings normally associated with uses permitted in the zone where the property is located.

Applicant's Reason for Appeal: Farm use is allowed outright on forest lands (OAR 660-006-0025(3)(b)). A barn is a building normally associated with farm use. Applicants intend to operate within an existing barn on the property.

On-Appeal Finding #1: Staff agree that the existing barn is a building normally associated with farm use which is a permitted use in this zone.

2. Staff Report Finding # 12: The home occupation would unreasonably interfere with existing uses on adjacent lands.

Applicant's Reason for Appeal: The use will not unreasonably interfere with existing uses on adjacent lands. The adjacent lands are primarily large tracts of forest lands.

On-Appeal Finding #2: The neighbors are concerned that a dog kennel and dog training facility will interfere with their uses on adjacent lands as documented in letters received from adjacent and nearby property owners and in the file. Staff does not want to refute the neighbors testimony, but it seems unlikely that the dog kennel and training facility would "unreasonably" interfere with existing residential uses in the Primary Forest Zone, given the fact that the subject property is 73 acres in size, approximately ¼ mile wide by ½ mile long, or approximately 1300 feet wide by about 2,600 feet long, and there are relatively great distances involved between adjoining uses.

3. Staff report Finding No. 14: A kennel is not a use permitted on forest lands.

Applicant's Reason for Appeal: Applicants are not constructing a structure. They are using an existing structure, a barn, which is allowed outright in the zone.

On-Appeal Finding #3: Staff agree that a kennel is not a permitted or conditional use on forest lands however staff supports a kennel as a conditional use home occupation if approved by the Board of Commissioners. Home occupations are conditional uses on forest lands. This application is for a conditional use permit to operate a home occupation which is a dog kennel and training facility. Home Occupations are permitted in any zone.

ON-APPEAL RECOMMENDATION:

The Planning Commission denied the application for a dog kennel and training facility.

Upon reconsideration of the Planning Commission staff report and all previous criteria and findings planning staff feel the applicants meet all but one of the above criteria. If the Board of Commissioners can find that the proposed home occupation for a dog kennel and training facility will not "unreasonably interfere with other uses permitted in the zone in which the property is located" then staff recommends approval with the following conditions:

1. All activities and storage of materials associated with the home occupation shall be conducted entirely within the on-site residence or kennel facility. Training may occur outside, but all dogs must be controlled and remain on applicants property, and further not allowed to run freely in a manner which harasses or bothers neighbors.
2. Prior to the issuance of a building permit, the applicant shall obtain an access permit from the County Road Department for any new driveways intersecting Parkdale Road from the subject property.
3. The kennel shall be located within the confines of the existing barn, as depicted on the preliminary plans.
4. Prior to final approval and the issuance of any permits, the applicant shall obtain authorization from the Land Development Services Sanitation Division for the connection of the proposed use to the site's existing subsurface septic system or construction of a specialty septic system.
5. The requirements of Oregon Administrative Rule's 660-006-0029 and 660-006-0035, as interpreted by the Oregon Department of Forestry in their "Land Use Planning Notes: Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," dated March 1991, shall be implemented in the construction and occupation of the proposed structure.
6. Prior to final approval and the issuance of a development permit, the applicant shall provide a sketch showing how the fuel-free break areas described in the Oregon Department of Forestry's "Land Use Planning Notes: Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," will be maintained for the proposed kennel.
7. No new structures, nor any additions to existing structures, are permitted as a result of this conditional use permit alone.
8. All restrictions pertaining to the home occupations as set forth in the Columbia County Zoning Ordinance shall be strictly observed.
9. All provisions of the Oregon Uniform Building Code and Uniform Fire Code must be met before the business may occupy or operate in the building, and must be continuously observed at all times while the business is in operation.

10. Within two years from the date of final approval and the issuance of a building permit for the proposed use, the applicant shall apply for a permit review to determine whether the use has exacted any perceived negative impacts on the neighborhood, and how those impacts might be mitigated. That review shall be conducted by the planning director or his designee, if negative findings are made, the director may refer the permit to the Planning Commission for a public hearing.
11. This permit shall become void two (2) years from the date of final decision if development has not begun. An extension of the permit may be granted by the planning director if requested in writing before the permit's expiration and if the applicant was not responsible for the failure to begin development.

ATTACHMENT "B"
SUPPLEMENTAL FINDINGS

1. The Board of County Commissioners finds that substantial evidence was presented to show that a kennel is not a farm use according to applicable law. ORS § 215.203(2)(a) lists a number of uses which are considered farm uses. Among such uses are animal husbandry and the raising of livestock. The Board of County Commissioners finds that the operation of a kennel is not animal husbandry, and that dogs are not livestock. The Board of County Commissioners finds that because the operation of a kennel is not a "farm use," a kennel is not a use permitted outright on primary forest land.(ORS OAR 660-006-0025(3)permits farm uses on forest lands outright). Therefore, the operation of the proposed dog kennel is not a use permitted outright on the Applicants' PF-76 land. The Board of County Commissioners finds, however, that a dog kennel is permissible as a conditional use on Applicants' property as a home occupation because Applicants have met all of the criteria for such a conditional use permit.

2. Columbia County Zoning Ordinance § 504.1 requires that conditional uses permitted in a primary forest zone "shall be consistent with forest and farm uses and with the intent and purposes set forth in the Oregon Forest Practices Act." ORS 527.630 states that it is the policy of the Oregon Forest Practices Act "to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forest land for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water and fish and wildlife resources that assures the continuous benefits of those resources for future generations of Oregonians." The Board of County Commissioners finds that substantial evidence has been presented that the land on which the proposed kennel is to be situated is flat and largely void of trees. Therefore, the Board of County Commissioners finds that substantial evidence has been presented that although the operation of a kennel on such land does not "assure" the continuous growing of forest products or resource use, the operation of the kennel does not conflict with the growing of forest products or resource use. No evidence has been presented suggesting that the operation of such a kennel will in anyway interfere with the growing and harvesting of trees or the sound management of soil, air, water and fish and wildlife resources.

3. Columbia County Zoning Ordinance § 504.3 requires that the kennel operation be limited to "a site no larger than necessary to accommodate the activity and, as such will not materially alter the stability of the overall land use pattern of the area or substantially limit or impair the permitted uses of surrounding properties...." The Board of County Commissioners finds that the kennel will be operated largely out of an existing barn on the property, with occasional training to be done outside of the barn, and that such a site is no larger than is necessary to accommodate the activity. The Board of County Commissioners further finds that substantial evidence has been presented to show that the operation of a dog kennel will not materially alter the stability of the overall land use pattern of the area or substantially limit or impair the permitted use of surrounding properties. The Board finds that other properties in the area are zoned as RR-5 and Primary Forest (PF-76). This land use pattern will remain the same during the operation of the kennel, and permitted uses on surrounding properties will not be impaired or limited by a kennel's operation. Some additional

noise may be caused due to barking dogs and gun fire devices, which may disturb residential neighbors. However, substantial evidence has been presented to show that such noise will be mitigated such that permitted uses on surrounding properties will not be substantially limited or impaired. (See Supplemental Finding No. 7).

5. Columbia County Zoning Ordinance § 1507.1B mandates that no more than five full or part-time persons be employed on site. The Board of County Commissioners finds that substantial evidence has been presented to show that the kennel will be operated by Mr. and Mrs. Higgins, and possibly two other persons, and therefore, no more than five full or part-time persons will be employed on the site.

6. Columbia County Zoning Ordinance § 1507.1C mandates that a home occupation be operated substantially in the dwelling home, or in another building or buildings normally associated with uses permitted in the zone in which the property is located. The Board of County Commissioners finds that the kennel is to be operated out of a barn which is a building normally associated with farming. The Board of County Commissioners further finds that farming is a permitted use on primary forest land. (See supplemental finding 2).

7. Columbia County Zoning Ordinance § 1507.1D requires that a home occupation cannot “unreasonably interfere with existing uses on adjacent land or with other uses permitted in the zone in which the property is located.” The Board of County Commissioners finds that the uses on adjacent properties are primarily residential. There has not been any evidence presented that livestock or other farming uses are located on such property. The area is characterized by wide open southwesterly sloping and gently rolling pastureland that forms, for the most part, large units of land with little tree cover. The subject property is approximately 2,600 feet long by 1,300 feet wide between Parkdale and Doan County Roads which constitutes approximately 73 acres, and is surrounded by 11 tax lots on which there are 7 dwellings. The closest dwelling to the subject property is a newly sited uninhabited double wide mobile home at 28425 Parkdale Road, which is approximately 400 feet directly to the north of the subject property and 600 feet from the proposed kennel site. There are 2 other dwellings at 28306 and 28353 Parkdale Road which are approximately 500 feet distant from the subject property. Other dwellings in the area are a much greater distance from the subject property. The Board of County Commissioners finds that evidence has been presented that noise in the form of barking dogs, and gun shot noises from the dog training may interfere with the residential use of adjacent land. Evidence was presented that adjacent property owners have previously been disturbed by barking dogs on Applicant’s property due to its flat nature and relatively close proximity of the barn, and that adjacent property owners are concerned that additional dogs will create even more noise. However, substantial evidence has been presented to show that other dogs live on adjacent property in conjunction with its residential use, and that such dogs bark as well. Substantial evidence has also been presented that Applicant’s personal dogs are being housed in a portable kennel on the ground, and that their barking will be heard until the new kennel is constructed. In addition, evidence has been presented that the Applicants live close to the proposed kennel site and are interested in keeping the noise created by the kennel down to a minimum. The Board of County Commissioners finds that the noise from those dogs and any

additional dogs can and will be minimized by proper insulation of the kennels. Evidence has been presented that Applicants have planned to do extensive remodeling of the barn in order to insulate against noise emanation, so that the Applicants and their adjoining property owners will not be disturbed by barking dogs. Applicants have presented substantial evidence to show that they plan to build 4' insulated cement walls around the kennels, will be careful not to let sound escape when they install an air circulation system, and that they will work with a landscaper to plant sound barrier plants around the barn. The Board of County Commissioners finds that placing a condition of approval requiring such sound insulation will mitigate most of the barking. Applicants have also indicated that when dogs are taken out of the kennel for training, they will be taken to the middle of the 73 acre property, will be with their trainers the entire time and will not be allowed to run free.. Evidence has also been presented that adjacent property owners are concerned that noise from gun fire will interfere with their use of the land. However, the Board of County Commissioners finds that a gun range is located just south of the subject property, and that gun fire is currently heard by adjacent property owners. Therefore, the Board of County finds that the operation of a dog kennel at the proposed site will not "unreasonably interfere" with existing uses on adjacent lands.

8. Columbia County Zoning Ordinance § 1503.5E requires that "the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district." The primary forest zone is intended to be primarily used for forestry and farming, and their related uses. Residential use of such property is a conditional use. The Board of County Commissioners finds that the proposed kennel will not have a substantial effect on farming or forest uses on adjacent lands. No evidence has been presented that existing farming or forest practices on adjacent lands will be adversely effected by the presence of a kennel.

9. Columbia County Zoning Ordinance § 1503.5G requires that the proposed use will not create any hazardous conditions. The Board of County Commissions finds that the Applicants have planned to remodel an existing barn into kennels with dog runs, and an office. To the extent required by the Building code, the Applicants will have to have the remodeling inspected to ensure that it meets code. In addition, Applicants must comply with Oregon Department of Environmental Quality regulations for the proper disposal of dog excrement. Prior to the issuance of a building permit, the Applicant shall obtain authorization from the County Sanitarian. The Board of County Commissioners finds that the proposed use will not create any hazardous conditions because Applicants will be required to meet all applicable State and County codes.