

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending)
the Text of Section 400)
(Subsection 404.11) of the)
Columbia County Zoning)
Ordinance)
_____)

ORDINANCE NO. 88-7

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

SECTION 1. AUTHORITY.

This Ordinance is adopted pursuant to ORS 203.035, 215.050 and 215.223.

SECTION 2. TITLE.

This Ordinance shall be known as Ordinance No. 88-7.

SECTION 3. PURPOSE.

The purpose of this ordinance is to allow the breeding, boarding and training of horses in the Forest Agriculture (FA-19) Zone.

SECTION 4. AMENDMENT.

Section 400 (Subsection 404.11) of the Columbia County Zoning Ordinance is amended to read as follows:

"The breeding, boarding and training of horses for profit provided the Commission or Board finds in the particular case that the request can be granted pursuant to a proper exception to Goal 4 - Forest Lands."

SECTION 5. FINDINGS.

Findings of fact and conclusions of law in support of this amendment are attached hereto labeled Exhibit "A" and Exhibit "B" incorporated herein by this reference.

SECTION 6. SEVERABILITY.

If any portion of this ordinance, including Exhibit "A", is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion and such holdings shall not affect the validity of the remaining portion thereof.

SECTION 7. EMERGENCY.

This ordinance being immediately necessary to maintain the public welfare, health and safety, an emergency is declared to exist and this ordinance takes effect immediately upon its adoption.

REGULARLY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON THIS 21st DAY OF September, 1988.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Michael J. [Signature]
Chairman

By: May W. [Signature]
Commissioner

By: Jack R. [Signature]
Commissioner

Attest:

Cheri Maylan
Recording Secretary

First Reading: September 21, 1988

Second Reading: September 21, 1988

Effective Date: September 21, 1988

EXHIBIT "A"

BEFORE THE COUNTY PLANNING COMMISSION
FOR COLUMBIA COUNTY STATE OF OREGON

In the Matter of the Application of)
Columbia County to Amend the Text)
of Section 404.11 of the Columbia)
County Zoning Ordinance)

Findings of Fact,
Conclusions of Law,
& Recommendation

I. APPLICANT'S REQUEST

Columbia County proposes to amend the text of Section 404.11 of the Columbia County Zoning Ordinance to allow "the breeding, boarding, and training of horses for a profit" as a Conditional Use in the Forest-Agriculture (FA-19) Zone. Section 404.11 currently allows only "the boarding of horses for a profit" as a Conditional Use in the FA-19.

II. COUNTY ZONING CRITERIA

Section 1606 and 1608 of the Zoning Ordinance, contain the procedures to be followed to amend the text of the Zoning Ordinance. Sections 1606 and 1608 read as follows:

1606 Legislative Hearing: A request to amend the text of the Zoning Ordinance or to change a large area of the Zoning Map of Columbia County in order to bring it into compliance with the Comprehensive Plan are legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures:

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change.
- .2 Notice of Legislative Hearing shall be published at least twice, one (1) week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than ten (10) calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners.

1608 Consistency with the Comprehensive Plan: All amendments to the Zoning Ordinance Text and Map shall be consistent with the Comprehensive Plan Text and Maps.

- .1 The Commission shall hold a hearing to consider the proposed amendments and shall make a recommendation to the Board of Commissioners with regard to the proposed amendments. The Board of Commissioners shall hold at least

one hearing to consider the proposed amendments. Both the Commission and the Board of Commissioners' hearings will require notice in the manner outlined in Section 1612.

In addition to the requirements voted above, the County must also notify the Department of Land Conservation and Development (DLCD) at least 45 days prior to final approval of the text plan.

III. FINDINGS:

- A. The Forest-Agriculture (FA-19) Zone was included in the Zoning Ordinance in 1985 to "...protect and promote farm and forest uses on lands which have resource value, but which are not suited for either the farm (PA-38) or the Forest (PF-76) Zone because of smaller parcel size, conflicting adjacent uses, adverse physical features, or other limiting factors."
- B. ORS 215.283(1)(0) authorizes the breeding, boarding, and training of horses for a profit as an allowed use in areas zoned for exclusive farm use.
- C. Neither the County nor the Department of Land Conservation and Development (DLCD) considers the FA-19 Zone as an "exclusive farm use" zone.

IV. CONCLUSIONS & RECOMMENDATION

Given that the statutes allow breeding, boarding and training horses for profit as an outright use within exclusive farm use zones; and,

Given that except for its smaller parcel size, its potential for adverse physical features and conflicting adjacent uses, the FA-19 Zone would be considered as a primary resource zone;

It appears appropriate to amend the Zoning Ordinance to allow the breeding, boarding, and training horses for profit to be reviewed as a Conditional Use within the FA-19 Zone.

Therefore, Staff recommends amending the text of Section 404.11, of the Columbia County Zoning Ordinance, to read "the breeding, boarding and training horses for profit."

EXHIBIT "B"

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending the Text)
of Section 400 (Subsection 404.11))
of the Columbia County Zoning)
Ordinance)
_____)

LEGAL RECOMMENDATION

On May 19, 1988, Judge Michael McElligott ruled that Merrill and Roseanne Strobels' conditional use permit for a "commercial riding arena and horse stable" was limited to the activities allowed by its underlying zoning category, the "boarding of horses for profit."

In the course of these proceedings, the Strobels' attorney, Robert VanNatta, suggested that the ordinance be amended to conform to the uses allowed by ORS 215.283(1)(o) which was amended in 1987 to allow the "breeding, boarding and training of horses for profit." In his opinion, such an amendment would remove any uncertainty as to the legality of the Strobels' use of their property.

After the court hearing, but before the final order, judgment and decree in the Strobel case, I asked the Board if they wished to consider amending the ordinance in a way which would allow the Strobels to possibly recoup some of their investment in their property. In my opinion, however, such an amendment would not by itself allow the same range and intensity of activities as existed previously on the property. The Board said to give the amendment a try and to get the Planning Commission's recommendation.

In retrospect, the proposed ordinance amendment was not coordinated with Planning Staff as well as it could be. It was more my response to a perceived individual hardship in which it could be argued the County had some role, than a look at the overall planning needs of the County. Land Development Services Administrator, William Greene, pointed out correctly that the Forest Agriculture (FA-19) zone in which the Strobel property lies is not an exclusive farm use zone to which ORS 215.283 applies. Rather, it is designated as Forest Land on the Comprehensive Plan Map. Secondly, he asked why the amendment was only proposed for the FA-19 zone and not the Primary Agriculture (PA-38) zone which is an exclusive farm use zone. This was simply something I overlooked.

On July 11, 1988 the Planning Commission considered the proposed ordinance amendment. Although they recommended approval of the amendment to the Board, they also questioned why a similar amendment had not been proposed for the PA-38 zone. At the hearing, Mr. and Mrs. Hein presented their objections to the proposal. They pointed out correctly the originally scheduled final Board hearing date for the ordinance amendment in August, 1988 was not 45 days after the required notice to the Department of Land Conservation and Development. That problem, of course, has been solved by delaying this hearing until September 7, 1988. Secondly, they pointed out

that because FA-19 Lands are designated as Forest Land on the Comprehensive Plan Map, ORS 215.283(1)(o) is inapplicable and any change to the text of the ordinance must be in compliance with Goal 4 - Forest Lands. That goal requires forest lands to be conserved for forest uses. This amendment would not comply with Goal 4, they argued, because of the Oregon Supreme Court's decision in the recent case of 1000 Friends of Oregon v. L.C.D.C. et al., Lane County's comprehensive plan acknowledgment case. In that case, the court held that simply because a particular use was allowed in an exclusive farm use zone, that did not mean that Goal 4 was satisfied.

In my preparation for this hearing I looked through L.C.D.C.'s administrative rules thinking perhaps that an exception to Goal 4 would be needed to justify this ordinance amendment. In that process I discovered OAR 660-04-010(1)(b)(A) which states that an exception to Goal 4 is not necessary to allow farm uses as defined in ORS 215.203. However, Mr. and Mrs. Hein's attorney, Ed Sullivan, has sent me a copy of a notice of a hearing by L.C.D.C. which proposes to repeal that administrative rule based on the Lane County case. As the court put it, "L.C.D.C. cannot by rule or policy statement amend the goals or reinterpret the goals to suggest that farm uses are also forest uses by concluding that because a use is allowed by Goal 3 [Agricultural Lands] it must also be allowed by Goal 4."

Strictly put, I suppose, since the administrative rule has not been repealed, an exception to Goal 4 is not necessary. But, in the likely event of an appeal, the Land Use Board of Appeals and any appellate court would probably invalidate the administrative rule and reverse our decision approving the ordinance amendment, as originally proposed, based on the Lane County acknowledgment case.

However, simply because FA-19 land is designated as Forest Land on the Comprehensive Plan Map and Goal 4 must be considered doesn't mean that we cannot amend the zoning ordinance. Large chunks of County land are zoned FA-19 and yet we have allowed, and L.C.D.C. has acknowledged, all kinds of uses on those lands which are more agricultural or residential in nature than forestry practice. The Strobel land itself is unsuited for forestry and is surrounded by agricultural and rural residential uses. The reason for designating such lands as forest lands instead of agricultural lands may have been that it was felt at the time, until the Lane County case, that Goal 4 was a more flexible goal than the agricultural goal, Goal 3. (In addition, it may have been simpler to place these lands in an FA-19 zone than to take an exception to Goal 3 for these lands although they would otherwise have qualified for an exception.) Now, however, the Heins are seeking to change what may have been perceived as a loophole into a noose.

My recommendation is that the Board recognize reality, that many of the lands which we have zoned FA-19 are not forestry, but agricultural or residential in nature. Therefore, the outright permitted and conditional uses on those lands in our zoning ordinance which have been already acknowledged by L.C.D.C. should be allowed to continue. In addition, new uses which conform to the spirit of the zone should also be allowed in the zone as permitted or conditional uses when deemed appropriate by the Board of Commissioners. I don't think an exception to Goal 4 is necessary to allow the breeding, boarding and training of horses for profit as a general category in the FA-19 zone, but as the Heins have I believe correctly pointed out, Goal 4 cannot be

ignored. Therefore, my recommendation is that the Board consider changes to the ordinance amendment as proposed which would require a Goal 4 analysis on a case-by-case basis for each conditional use request under the new provision. My suggested amendment to the zoning ordinance as modified would then read as follows:

"404 Conditional Uses: * * *

" * * *

" * * *

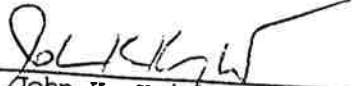
".11 The breeding, boarding and training of horses for profit provided the Commission or Board finds in the particular case that the request can be granted pursuant to a proper exception to Goal 4 - Forest Lands."

If approved, owners of FA-19 property would not only have to obtain a conditional use permit to conduct this kind of activity as a primary use on their property, but they would also have to show that either 1) that the land has already been physically developed to such an extent, or that the surrounding area has been similarly developed to such an extent, that use of the property for forestry purposes is impractical, or 2) that other reasons exist to justify an exception to Goal 4. Even then, approval of such a conditional use request would not, by itself, allow the range and intensity of activities on the Strobel property, for example, as existed prior to Judge McElligott's decision. It might, however, allow them to make a reasonable return on their investment in a way which conforms with the spirit of the zone. In addition, depending on the conditions which might be attached to the conditional use permit, if approved, these activities could be allowed in a way which does not unreasonably affect the enjoyment and liveability of surrounding properties.

As one further recommendation to the Board, I recommend that the Planning Commission be asked to consider whether to amend the zoning ordinance to allow the "breeding, boarding and training of horses for a profit" in the PA-38 zone. This would satisfy the concerns raised by William Greene and the Planning Commission.

DATED this 7th day of September, 1988.

Respectfully submitted

By: 
John K. Knight, OSB#78277
Columbia County Counsel