

## BOARD OF COUNTY COMMISSIONERS

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~~13500~~

KLAMATH COUNTY, OREGON

Vol. M82 Page 12196

1  
2 IN THE MATTER OF ZONE CHANGE )  
3 NO. 13-82 FOR )  
4 JERRY SCARABOROUGH )

Findings of Fact and Order

5 This request for a zone change from F-I (Forestry, 80 acre  
6 minimum) to F-II (Forestry, 20 acre minimum) was reviewed at  
7 a public hearing on May 6, 1982, before the Klamath County  
8 Hearings Officer. The purpose of the change was to allow for  
9 two, twenty acre parcels to be separated from the 160 acres owned  
10 by Mr. Scaraborough. Testimony was received from the applicant,  
11 from the Bureau of Land Management and the Oregon Department of  
12 Forestry, and from County Staff. At the close of the hearing,  
13 the Hearings Officer recommended that the request be approved.

14 The Board of Commissioners reviewed the record at a hearing  
15 on June 21, 1982 and then voted to accept the Hearings Officer's  
16 findings, conclusions and recommendation as follows:

FINDINGS OF FACT:

17  
18 1. The applicant is the owner of the following described  
19 property: NE¼ of Section 30, Township 38, Range 6, Being  
20 described as Tax Lot 20, Klamath County, Oregon.

21 2. The site is generally located northeast of the Keno  
22 Access Road, about 9 miles north of its junction with Highway  
23 66.

24 3. The land has the following physical features:  
25 cut-over timber land, with fir and pine trees being natural  
26 cover, and further, the land slopes upward to the northeast from  
27 an elevation of 5120' near the Keno Access Road to 5320'.

28 4. The existing land use is forestry, the existing plan

02 SEP 14 AM 11 30

1 designation is forestry, and the existing zone designation is  
2 F-I (Forestry, 80-acre minimum).

3 5. Access to the property is along the Keno Access Road  
4 which is a hard-top BLM road.

5 6. The applicant is requesting a re-zoning so that he  
6 may apply for a partitioning to split the land into three parcels  
7 two parcels consisting of approximately 20 acres and one parcel  
8 consisting of 120 acres.

9 7. There are currently only one to three residences within  
10 a ten mile radius of this site.

11 8. The applicant plans to either lease or sell the two,  
12 twenty (20) acre sites which he intends to create by partitioning  
13 as Christmans Tree farms and intends to retain the one hundred  
14 forty (140) acre portion to use as a tree farm and the bottom land  
15 area for a trout farm.

16 9. The bottom land area is not capable or viable for  
17 agricultural or forest production due to the nature of the soil  
18 and the topography.

19 10. The area will not require maintenance of the road for  
20 winter access as the applicant does not intend to use it for  
21 a purpose where winter access would be required.

22 11. The applicant is currently allowed to have a sufficient  
23 number of residences on the property to house those individuals  
24 which he may employ to work in forestry activities as the  
25 permitted use currently on the property.

26 12. The applicant intends that the use of the land remain  
27 as forestry as permitted in the zone change from F-I (Forestry,  
28 80-acre minimum) to F-2 (Forestry, 20-acre minimum). The re-

1 zoning of the land would not permit a difference kind of zoning  
2 of the land would not permit a difference kind or character of  
3 use of the land. It would allow the applicant to make an  
4 economically viable use of the land while remaining in  
5 a forestry use.

6 13. The applicant has had prepared, as his Exhibit #2, a  
7 forestry management plan by the Department of Forestry, Klamath  
8 Lake District, dated July 17, 1981. The purpose of this plan  
9 was to maximize the commercial timber growth on all forest land,  
10 utilize the property as a multiple use resource and establish a  
11 Christmas tree plantation on a small portion of the tract, plus  
12 clean up all slash from previous logging operations. The plan  
13 separates the property into three (3) separate parcels  
14 determined by the type of timber resource on that particular parcel.  
15 The applicant has apparently followed this plan in requesting this  
16 zone change.

17 14. The Klamath County Director of Public Works, Earl  
18 Kessler, has submitted a letter indicating that this road  
19 receives no winter maintenance and does receive a considerable  
20 amount of snow during the winter. The only concern indicated by  
21 Mr. Kessler was that someone would attempt to utilize the road  
22 during the winter months, and would be unable to do so. The  
23 evidence presented by the applicant as set forth above in regard  
24 to the use of the road during the winter meets the objections  
25 set forth above as concerns by Mr. Kessler.

26 15. The following Exhibits were offered and received into  
27 evidence:

28 Klamath County Exhibits: "A", "B", "C", and "D".

1 Applicants Exhibits: #1 and #2.

2 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

3 1. Klamath County Development Code, Section 48.003, sets  
4 forth general criteria for consideration in zone changes

5 A. The proposed change of zone is in compliance with  
6 the Klamath County Comprehensive Plan and the provisions of this  
7 Code.

8 B. The proposed change of zone adequately responds to  
9 the site's specific conditions to minimize adverse effects upon  
10 surrounding property that would be affected by the proposed change.

11 2. Klamath County Development Code, Section 48.001, sets  
12 forth the general purpose of Article 48, "Change of zone de-  
13 signation", including the requirement that the zone changes are  
14 required to maintain conformance with the Klamath County  
15 Comprehensive Plan.

16 3. ORS 197.175 requires all zoning ordinances adopted by  
17 a County to be in conformity with the State-wide Planning  
18 Goals and Guidelines.

19 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

20 1. See Findings of Fact set forth above numbered 1-15.

21 2. The zone change requested from Forestry 1 to Forestry  
22 2 is the most appropriate use for the subject property due to  
23 the timber resources and their location on the applicant's  
24 property.

25 3. The proposed zone change is in compliance with the  
26 Klamath County Comprehensive Plan and the provisions of this  
27 Code.

28 4. The proposed change of zone adequately responds to

1 The site's specific conditions to minimize the adverse affects  
2 upon surrounding property that would be affected by the proposed  
3 change. Since the proposed change is in conformity with the  
4 current existing uses in the area, the only purpose of the  
5 change is to reduce the minimum lot size.

6 STATE-WIDE PLANNING GOALS, CRITERIA AND FINDINGS:

7 See Exhibits "AA", Pages 1-5, attached hereto and incorporated  
8 by this reference.

9 CONCLUSIONS OF LAW AND DECISION:

10 A. The change of zone from Forestry 1 to Forestry 2  
11 satisfies all applicable Klamath County Development Code criteria  
12 and policies governing re-zonings.

13 B. The change of zone from Forestry 1 to Forestry 2  
14 is in conformity with the Klamath County Comprehensive Land Use  
15 Plan.

16 C. The change of zone is consistent with and complies with  
17 all applicable State-wide Planning Goals and Statutes.

18 D. The health, safety and welfare of the residents in  
19 Klamath County require that the following conditions be placed  
20 on this change of zone designation:

21 1. That the applicant follow his plat plan as  
22 designated as Applicant's Exhibit #1 herein.

23 2. ~~That~~ its residences or housing units are constructed  
24 on property that obrders BLM land, that a setback of 300 feet be  
25 provided for.

26 E. The best use of this property in terms of the benefit  
27 to the community, considering the interest of Klamath County  
28

12201

1 citizens, is Forestry-2. There is substantial evidence in the  
2 record to support this re-zoning and no evidence against the  
3 position other than the conditions set forth above. Therefore,  
4 it is hereby ordered that the property described as the NE $\frac{1}{4}$  of  
5 Section 30, Township 38, Range 6, be granted a change of zone  
6 from F-I (Forestry I) to F-II (Forestry II).

7  
8 DONE AND DATED THIS 9<sup>th</sup> DAY OF September, 1982

9  
10 Harold L. Nyman  
11 CHAIRMAN

12 Philip A. Cheyne  
13 COMMISSIONER

14 Dee Kuonen  
15 COMMISSIONER

16  
17  
18 APPROVED TO FORM  
19 BOIVIN AND BOIVIN

20 BY: Robert Brown

## GOAL 1: CITIZEN INVOLVEMENT

## Relevant Policies:

Notice of this matter has been sent to neighboring property owners, concerned public agencies and to the Herald and News. A review before the Hearings Officer has been scheduled for May 6, 1982.

## GOAL 2: LAND USE PLANNING

## Relevant Policies:

This proposed rezoning is for the purpose of allowing two 20-acre parcels to be split from the total of 160 acres. The applicant, in a telephone conversation, reports that these parcels would be used for residences in conjunction with small-scale forestry operations (Christmas tree farms). He also is looking into the possibility of establishing a fish-culture operation on the property, using a small stream that runs through its southwestern portion. The area in general is used for large-scale forestry operations with much of the land either owned by the Weyerhaeuser Company or managed by the Bureau of Land Management. Typical holdings in the area range from a minimum of 160 acres to several thousand acres. There are no smaller parcels within a radius of five miles.

Policy 8: "Existing land uses shall be preserved from redevelopment and conflicting nearby uses except as otherwise required by policies of the plan."

The Hearings Officer would need to consider the possible effects of 20-acre parcels in this area, particularly if homesites are to be established-See letter from Oregon Forestry.

GOAL 3: AGRICULTURAL LANDS  
Relevant Policies:

Soils in the area are in SCS Class VII-extremely marginal for agricultural use. The elevation of the property makes frost likely at almost anytime during the year. There are no agricultural uses in the area at the present time and it does not appear that this goal applies.

GOAL 4: FOREST LANDS  
Relevant Policies:

The area in general is highly productive timber land, producing fir and pine. Most of the property is owned by Weyerhaeuser or the Bureau of Land Management with scattered tracts owned by the Boise-Cascade Company, Ellingson Lumber, and individuals. The applicant will have to show that his proposal is consistent with the intent of the forestry goal to "conserve forest land for forest uses" and that his development would not materially interfere with forest practices on surrounding land. The Oregon Forestry Department (see County Exhibit C) points out that "it becomes questionable whether this size ownership will constitute an economically feasible forest management unit."

Policy 1: "Existing forest uses shall be protected unless proposed land use changes are in conformance with the Klamath County Comprehensive Plan."

Policy 2: "The County shall regulate development of non-forest uses in forested areas."



AND NATURAL RESOURCES  
Relevant Policies:

12204

There are no inventoried scenic, historic, or natural resources in the area that would be affected by the proposal to create 20-acre parcels.

GOAL 6: AIR, WATER AND LAND RESOURCE QUALITY  
Relevant Policies:

As long as development of the property takes slope and stream into account to avoid erosion, no negative effects on air, water, or land resource quality are evident.

GOAL 7: NATURAL DISASTER AND HAZARDS AREA  
Relevant Policies:

The area is rated as having a medium fire hazard potential. Residential fire protection is not provided in the area. This area received 30 inches of precipitation per year, most of it in the form of snow. This is double the precipitation of the Klamath Falls area on April 23, 1982. The road was found to be blocked by snow a foot or more in depth at a point two miles south of the property where the elevation was about 500 feet lower. This situation would cause access problems for the owner as well as for any emergency vehicle trying to reach the property.

GOAL 8: RECREATION NEEDS  
Relevant Policies:

12205

The surrounding lands are open to recreational uses such as hunting and hiking. It does not appear that applicant's proposal would materially interfere with such uses.

GOAL 9: COUNTY ECONOMY  
Relevant Policies:

The zone change would result in only minor economic benefits.

GOAL 10: HOUSING  
Relevant Policies:

There are no residential uses within a radius of five miles or more. Any residential development of this property would be impeded by the lack of public facilities and utilities and by access problems.

GOAL 11: PUBLIC FACILITIES AND SERVICES  
Relevant Policies:

12206

No electrical or telephone service are available. The site is outside of any fire protection district.

GOAL 12: TRANSPORTATION  
Relevant Policies:

The site fronts on the Keno Access Road, a paved road under BLM jurisdiction. The road received no winter maintenance or snow removal and is blocked for several months each year.

GOAL 13: ENERGY CONSERVATION  
Relevant Policies:

The proposal would not affect energy conservation.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record .

This 14 day of Sept A.D. 19 82 at 11:30 o'clock A.M., and  
duly recorded in Vol. M 82, of Deeds on page 12196

No Fee

By Joyce McArthur  
EV. LYN BIEHN, County Clerk

COMMISSIONERS JOURNAL

EXHIBIT "AA", Page 5.