

BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGON

In the matter of the Appeal of the)
Denial by the Klamath County Planning)
Commission of the Preliminary Plat of)
Tract 1234 - Deer Knoll, Edward Shipsey)
Applicant)

ORDER #126

This matter came before the Board of Commissioners of Klamath County, Oregon for hearing upon the Appeal of the decision by the Klamath County Planning Commission denying the application of Edward Shipsey for approval of the Preliminary Subdivision Plat for Tract 1234 Deer Knoll. Edward Shipsey was represented before the Board of County Commissioners by Bradford J. Aspell and the law firm of Aspell, Della-Rose & Richards.

The decision of the Klamath County Planning Commission denying approval of the said subdivision plat was made on May 28, 1985. Edward Shipsey then appealed that decision to the Board of County Commissioners and the Board of County Commissioners held public hearings to consider the appeal on July 10, 1985 and on August 21, 1985.

PROCEDURAL OBJECTION:

At the public hearing on August 21, 1985, William M. Ganong, Attorney at Law, representing Richard Bergstrom objected to any Order that might be entered by the Board of Commissioners reversing the Planning Commission decision and approving the preliminary plat for Tract 1234 on the grounds that the Planning Commission had failed to consider or review a hydrology report as is required by Article 46.004 [J] of the Land Development Code. After discussion between the members of the Board of County Commissioners, County Legal Counsel, and the

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attorneys for the parties, it was agreed by all concerned that the Board of Commissioners would consider the appeal on the merits and on the record before the Planning Commission, and that if the Board of County Commissioners determined that they should reverse the Planning Commission's decision denying the preliminary plat, the plat would be remanded to the Planning Commission for submission of a hydrology report by the applicant and consideration of that report by the Planning Commission. The decision reached by the Board of County Commissioners on the merits set forth hereafter eliminates the need for consideration of the objection raised by Attorney William M. Ganong.

FINDINGS OF FACT

The Board of County Commissioners makes the following findings of fact from the record before the Klamath County Planning Commission:

1. Edward Shipsey is the owner of a certain tract of land located in Section 20, Township 40S, Range 8 E.W.M., is further described as Tax Account No. 4008-2000-7400, and which contains approximately 20 acres.
2. Said tract of land is totally surrounded by the Cedar Trails Subdivision and said tract of land is currently zoned R-1.
3. The lots in said Cedar Trails Subdivision which adjoin the subject property are predominantly five acres in size, but range from 1 1/2 acres to 20 acres in size.
4. The vast majority of the lots in the Cedar Trails Subdivision are not improved with houses or other buildings.
5. The subject property lies within the Pearson Butte Deer Winter Range and the secondary buffer zone of the Bear Valley Eagle Roost.

6. The Planning Commission's decision denying approval of the preliminary plat submitted by the applicant was based primarily on the Planning Commission's concern that the development of said 20 acre parcel of property at the densities requested by the applicant would impact adversely on the said Deer Winter Range and Eagle Roost. The plat presented by the applicant contains 18 lots with a minimum lot size of one acre.

7. The Oregon Department of Fish & Wildlife submitted a letter to the Planning Commission which notes that the significant resource overlay zones which are intended to protect the said Deer Winter Range and Eagle Roost provide a 20 acre minimum lot size for the subject property, but that because the subject property is totally surrounded by the Cedar Trails Subdivision, the Fish & Wildlife Department would have no objection to the subdivision of the subject property with so long as the lots were at least five acres in size.

8. The applicant contends that in order to make productive use of the 20 acre parcel it must be developed with one acre minimum lots, and that it is not financially viable to develop the property with five acre lots. However, the applicant did not explain that contention nor did he present any evidence supporting that contention.

9. The applicant stated that development of the subject property with 18 one acre lots would satisfy a substantial public need or provide for a public good which clearly outweighs the retention of the property in its current state. The applicant stated that there is a demonstrated public need for small home sites within the subject area, however, the applicant's only proof that there is such a public need consisted of a

letter from a realtor making that statement, but said letter and the applicants contention is not documented by any substantial evidence in the record. The maps compiled by the Planning Department showing the improvements that have been made to the lots in Cedar Trails Subdivision discredit the applicant's said statement in that only approximately 10% of the lots in the Cedar Trails subdivision have been developed.

10. The applicant stated that the subject property is not used by Deer. However, the testimony of other area residents was that, in fact, Deer do use the subject property as a means of access to the Klamath River which lies Easterly of the subject property. In addition, the record contains no substantial evidence upon which this Board could make a finding that development of the subject property at the density proposed by the applicant would not impact or effect the adjoining Eagle Roost and Deer Winter Range.

11. In adopting its Comprehensive Land Use Plan and Land Development Code, the Board of Commissioners adopted economic, social, environmental, and energy papers for the Bear Valley Eagle Roost and the Big Game Winter Ranges. The Board found that development of property results in a disturbance of adjoining resource areas because of the impacts of human activity such as domestic dogs, motorcycles, and other recreational activities which are not limited to the property actually developed but extend well beyond the boundaries of a subdivision.

12. The applicant stated that the accumulative effect of developing the 20 acre parcel into one acre homesites would have little or no effect upon the big game range area. However, there is no evidence in the records to support that contention.

REQUIREMENT OF LAW

In reaching the decision hereafter set forth, the Board of Commissioners considered the following requirements of its Land Use Code and Comprehensive Plan Policies:

1. Comprehensive Plan Policy No. 13, goal 5, requires that the County protect the Bear Valley Eagle Roosting area and secondary buffer area by limiting density of development in the secondary buffer zone to one unit per 20 acres. Said policy also incorporates as part of the plan, the "Bald Eagle Management Guidelines" adopted by the Board on August 18, 1982. Section 3 [D][3][c] provides that subdivision in the secondary zoned area shall be limited to low density development.
2. The Board of Commissioners adopted on February 29, 1984 as part of its Comprehensive Plan, ESEE papers for the goal 5 Big Game Ranges and for the Goal 5 Bear Valley Eagle Roost. Said ESEE papers are herein incorporated by reference. Said papers require that the significant resource overlay zone be applied to all land which lies within a Big Game Winter Range or within the Bear Valley Eagle Roost primary buffer, secondary buffer, and fly-way. Said ESEE papers require that densities within the significant resource overlay zone be limited.
3. Article 83 of the land development code sets out the policy, criteria and reasons for the Significant Resource Zone. Section 83.003 subsection D, provides a seven part test by which the reviewing authority can modify the land use restraints in the significant resource areas. In reaching its decision in this matter, the Board of Commissioners has considered said criteria and incorporates said criteria in this Order by this reference.

4. Article 46 of the Land Development Code sets forth the criteria which a reviewing authority must consider in determining whether or not to approve a preliminary plat. Subparagraph A of section 46.003 requires the following finding:

" The preliminary plat of the proposed subdivision is in conformance with the Klamath County Comprehensive Plan."

DECISION

The Board of Commissioners of Klamath County, Oregon, finds that the preliminary plat submitted by the applicant is not in conformance with the Klamath County Comprehensive Plan for the reasons that the plat contains 18 one acre lots in an area which is predominantly composed of five acre lots and is located within the Significant Resource Areas of the Bear Valley Eagle Roost and the Pearson Butte Deer Winter Range. The Board of Commissioners finds that there is not substantial evidence in the record by which the Board of Commissioners can answer or make findings on the seven criteria set forth in section 83.003 [D] and thereby waive or modify the requirement of Klamath County's Plan that densities within the above said significant resource areas be limited to 20 acres in size. The Board of Commissioners notes that it's adopted Comprehensive Plan includes findings that the impacts of residential development on significant resources extend well beyond the boundaries of a subdivision and that in this case the record contains no evidence by which the Board of Commissioners can take an exception for the development of this property in one acre parcels.

Based upon the evidence and testimony in the record, the Board of Commissioners would probably support a preliminary plat which contained

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five acre lots. However, the Board notes that such a plat will have to be considered at further public hearings and there may be testimony developed at those hearings that would prohibit development of this property with five acre lots.

THEREFORE, it is hereby ORDERED that the decision of the Planning Commission of Klamath County, Oregon denying approval of the preliminary plat for tract 1234 - Deer Knoll is hereby affirmed.

Dated this 30th day of September, 1985.

BOARD OF COUNTY COMMISSIONERS
KLAMATH COUNTY, OREGON

By C. Zon Gerbert
C. Zon Gerbert

By Roger Hamilton
Roger Hamilton,
COMMISSIONERS

Approved as to form:

Robert Boivin
Robert Boivin
County Counsel

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of September A.D., 19 85 at 4:10 o'clock P M., and duly recorded in Vol. M85 day
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FEE NONE

Ret: Commissioners Journal

By Evelyn Biehn County Clerk
Pat Smith