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BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for)
 Conditional Use Permit 44-86) Klamath County Planning
 for Robert and Helen Frizzell) Findings of Fact and Order

A hearing was held on this matter on November 25, 1986,
 pursuant to notice given in conformity with Ordinance No. 45.2,
 Klamath County, before the Klamath County Hearings Officer, Brad
 Aspell. The applicant was represented by Robert Frizzell. The
 Klamath County Planning Department was represented by Kim Lundahl.
 The Hearing Reporter was Janet Libercajt.

Evidence was presented on behalf of the Department and on
 behalf of the applicant. There were no adjacent property owners
 present.

The following exhibits were offered, received, and made a
 part of the record:

Klamath County Exhibit A, Staff Report

Klamath County Exhibit B, Plot Plan

Klamath County Exhibit C, Assessor's Map

Klamath County Exhibit D, Pictures

Klamath County Exhibit E, Comments from Dept. of Fish &
 Wildlife

The hearing was then closed, and based upon the evidence
 submitted at the hearing, the Hearings Officer made the following

Findings of Fact:

FINDINGS OF FACT:

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1 1. Applicants are the owners of certain real property known
2 as the NW 1/4, NE 1/4 Section 36 Township 35 South, Range 12 East
3 Willamette Meridian, Klamath County, Oregon, tax account number
4 3512-36-200. The property is located approximately 4 miles north
5 of Beatty and 1 1/2 miles east of the Godowa Springs Road.
6 Subject property is square in shape with sides of 1,320 square
7 feet or being 40 acres in size. Topography is generally rolling
8 with general drainage through seasonal courses and swells, but has
9 no running water during the arid months. Vegetation consists of
10 brush, grass and scattered pines. Access to the property is along
11 unnamed travelled ways established by long term public use. The
12 property carries timbersite productivity rating of Class VI and
13 SCS soils classification of VII. This property is generally
14 located in close proximity to land owned by Alfred Crandall, which
15 was the subject of similarly land use application entitled in the
16 Matter of Request for Conditional Use Permit 41-86, for Alfred
17 Crandall. Such approval was granted on the 25th day of November,
18 1986. The hearings officer takes official notice of the findings
19 of fact there as are applicable here.
20 2. Applicant seeks a conditional use permit to develop a
21 non-forest homesite on the subject property. Based upon testimony
22 induced at the hearing, it appears that the applicant's previously
23 constructed a garage and workshop and drilled a well on the
24 subject property, and now seek to locate a single family residence
25 on the property. Access to the property is gained through 2
26 methods. The first across an unnamed dirt roadway which traverses

1 the property from southwest to northeast and across a more direct
2 improved road crossing the properties owned by one Joe Shelton to
3 the north. The location of the existing structures and the
4 proposed residence, well and septic tank are shown on the plot
5 plan marked as Exhibit "B". Water is obtained from individual
6 wells, sewage disposal through subsurface septic systems,
7 electricity is provided by Pacific Power & Light Company, fire
8 protection by Bly Mountain Rural Fire Protection District. The
9 property lies within the attendance area of the Klamath County
10 School District.

11 3. The Klamath County Planning Department staff recommends
12 approval of this application and believes the application meets
13 conditions found within the Klamath County Land Development Code,
14 Section 51.021(D). To sustain approval the 7 enumerated criteria
15 of Klamath County Land Development Code Section 51.021(D) must be
16 met.

17 A. It appears from review of Goal 3 (Forest Lands) that the
18 relevant consideration in designating the property as Forest/Range
19 in the Klamath County Comprehensive Plan and applying the zone
20 designation F/R (Forest/Range) existence of significant wildlife
21 habitat, the property having a predominate timbersite productivity
22 of 1-6, the land is needed for watershed protection of recreation
23 and as other lands that are needed to protect farm or forest uses
24 on surrounding designated agricultural forest lands. The subject
25 property lies in a saddle between two adjacent farming basins.
26 Nevertheless, the marketable timber is totally absent from the

1 site. The soil mantle is rocky, shallow and will not support much
 2 in the way of grazing. The greater the timber production and
 3 timber production potential obviously would be the adverse impact
 4 on non-forest uses. The hearings officer finds further that the
 5 intended development of the property as a homesite would not
 6 require the removal of merchantable timber or will it affect the
 7 ability to raise timber or provide grazing area on the surrounding
 8 40 acres. Accordingly the hearings officer finds that the
 9 application is compatible with forest uses, will not interfere
 10 seriously with accepted forest practices on adjacent lands or
 11 increase the cost of forestry operations on such lands, will not
 12 materially alter the stability of the overall land use pattern,
 13 therefore LDC-Section 51.021(D) Conditions 1, 2 and 3 have been
 14 met.

15 B. From review of the staff photographs and upon questioning
 16 of staff representatives and the applicants it was generally
 17 determined that little if any native grass grows on the subject
 18 property and then, only during the early spring months as a result
 19 of melting snows and some run off. Considering the terrain,
 20 adverse soil and land conditions it is unrealistic to expect the
 21 property to support any animal units in an economic fashion. LDC
 22 Section 51.021(D)(4) has been met.

23 C. As mentioned above, there has not been historically
 24 any merchantable timber on the property. Applicant proposes to
 25 clear 1 to 2 trees from the foundation area and leave the
 26 remainder of the vegetation largely intact. With a timbersite

productivity of VI, with a marginal range of timber production the forestry capability of the land is at best marginal. LDC Section 51.021(D)(5) has been met.

D. The home in question is located within the service area of the Bly Mountain Rural Fire Protection District and is in the area generally considered to be of high fire danger. Nevertheless, due to the lack of input by Bly Mountain Rural Fire Protection District as requested fire protection standards, the hearings officer concludes that the fire district is generally satisfied with fire protection standards. However, as further protection for the forest, the hearings officer finds pursuant to LDC Section 51.021(F) to apply the 5 enumerated standards of the staff report as set out below.

4. The location, size, design and operating characteristics of the proposed use must be in conformance with the Klamath County Comprehensive Plan, in this regard the hearings officer specifically finds as follows:

A. Goal 1 (Citizen Involvement) has been met as notice has been given to adjacent property owners, affected public agencies, by mailing notice and by publication in the Herald & News, a newspaper of public circulation, and a hearing has been held. The hearings officer specifically finds that no person has appeared in opposition to the application. The hearings officer finds that Citizen Involvement has been met.

B. Goal 2 (Land Use Planning), has been met. A public hearing has been held and the application has been found

1 consistent with he policies and procedures of the Klamath County
2 Land Development Code as described herein.

3 C. Goal 3 (Agricultural Lands); Goal 4 (Forest Lands) have
4 been been met through application of the conditional use permit
5 non-forest homesite in lands designated as forestry.

6 D. Goal 8 (Recreation Needs); Goal 9 (Economy of the State)
7 and Goal 10 (Housing) will be met as the proposed development will
8 provide a recreational oriented homesite on marginal lands.

9 E. Goal 5 (Open Spaces, Scenic, Historic Natural Resource
10 Areas); Goal 6 (Air, Water and Land Resource Quality); Goal 7
11 (Natural Disaster and Hazard Area); Goal 11 (Public Facilities and
12 Services); Goal 12 (Transportation); Goal 13 (Energy
13 Conservation); Goal 14 (Urbanization) do not directly apply or
14 affect this application.

15 5. The location, size, design and operating characteristics
16 of the proposed development must be compatible and not have
17 significant adverse effects upon the appropriate development and
18 use of abutting properties in the surrounding properties. In this
19 regard the hearings officer is required to consider all relevant
20 impacts of the development.

21 6. The hearings officer finds that the proposed development
22 is in an area which was subdivided some years ago, before the
23 advent of the current Comprehensive Plan. Accordingly there are a
24 number of rural residential homesites in the immediate area. The
25 hearings officer further notes that access to the property is off
26 undeveloped roads which are not maintained however the applicant

is fully aware of the limitations of public services available.

The hearings officer makes, as a condition to approval of this request, applicant's compliance with the siting standards specified in subsection 51.021(F) of the Land Development Code:

A. All residences shall maintain a set back of 50 feet from adjoining property lines.

B. No dwelling shall be located closer than 75 feet from the front property line.

C. Domestic water supplies for the development shall emanate from surface or subsurface water sources contained within the boundary of the property.

D. A fuel break of not less than 50 feet shall be required between the residences, accessory buildings and the forest zone.

E. The homeowner shall maintain and adequate water supply and appropriate firefighting equipment to contain fire from spreading to surrounding forest lands.

7. Applicant shall comply with Section 83.010 siting criteria for big game winter range areas.

Based upon the foregoing findings of fact the hearings officer makes the following conclusions of law.

CONCLUSIONS OF LAW

1. That the use is conditionally permitted in the zone in which it is proposed to be located.

2. That the location, size, design and operating characteristics of the proposed uses are in conformance with the Klamath County Comprehensive Plan.

3. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not have significant adverse effects on the appropriate development and use of abutting properties and the surrounding neighborhood based upon applicant meeting the following conditions of approval:

A. All residences shall maintain a set back of 50 feet from adjoining property lines.

B. No dwelling shall be located closer than 75 feet from the front property line.

C. Domestic water supplies for the development shall emanate from surface or subsurface water sources contained within the boundary of the property.

D. A fuel break of not less than 50 feet shall be required between the residences, accessory buildings and the forest zone.

E. The homeowner shall maintain and adequate water supply and appropriate firefighting equipment to contain fire from spreading to surrounding forest lands.

Therefore the hearings officer based upon the foregoing findings of fact and conclusions of law, accordingly orders as follows: that the real property described as:

"NW 1/4, NE 1/4 Section 36 Township 35 South, Range 12 East
Willamette Meridian, Klamath County, Oregon"

is hereby granted a conditional use permit for non-forest dwelling in the F/R (Forest/Range Zone) subject to the conditions of this Order.

2039

Entered Klamath Falls, this 10th day of February, 1987.

KLAMATH COUNTY HEARINGS OFFICER

BY: Bradford J. Aspell
BRADFORD J. ASPELL

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 9th day
of February A.D., 1987 at 12:47 o'clock P M., and duly recorded in Vol. M87,
of _____ Deeds on Page 2031
Evelyn Biehn, _____ County Clerk
By Sam Smith

FEE NO FEE

Return: Commissioners' Journal

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