

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of a Request for) C.U.P. 35-86
)
 4 CONDITIONAL USE PERMIT) FINDINGS OF FACT,
 5 for) CONCLUSIONS OF LAW
) AND ORDER
 6 IRIS MICKELSON)
 7)

8 THIS MATTER came on for hearing before Assistant
 9 Hearings Officer, James R. Uerlings, on the 5th of February,
 10 1987, at 10:00 a.m. in the Klamath County Commissioners' Hearing
 11 Room. The hearing was held pursuant to notice given in
 12 conformity with the Klamath County Development Code and related
 13 ordinances. The applicant was represented by D. REYNOLDS and the
 14 Klamath County Planning Department was represented by Kim
 15 Lundahl.

16 The following exhibits were marked, entered and
 17 received into evidence and made a part of the record: Exhibits
 18 "A" through "J".

19 The Assistant Hearings Officer, after reviewing the
 20 evidence presented, makes the following findings of fact,
 21 conclusions of law and decision:

22 FINDINGS OF FACT:

23 1. This request for a conditional use permit is for
 24 placement of a non-forest home in a Forest/Range zone under
 25 Section 51.021 of the Land Development Code.

26 2. The subject property is located South of Goldfinch
 27 Drive, approximately 1/4 miles West of Wildhorse Drive, on Bly
 28 Mountain, Klamath County, Oregon.

Page 1 - FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND DECISION

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3. The applicant is applying for a minor partition on the property as well as this conditional use permit. The minor partition will be handled by the Planning Director.

4. The legal description of the property is as follows: SE1/4 NW1/4 Section 32, Township 37 South, Range 11 East, Klamath County, Oregon, bearing Klamath County Tax Account No. 3711-32-500.

4. The Plan Designation of the property is Forest/Range and the Zone Designation is Forest/Range.

5. The property consists of 38.13 acres, rectangular in shape. The topography consists of low ridges trending Northeast and Southwest. General drainage of the property is well defined drainage courses. Vegetation consists of brush, grass and small pine trees. Access to the property is over Goldfinch Drive. The soil classification is SCS Class VI and the timber productivity rating is IV.

6. Regarding unique physical characteristics of the surrounding lands, the property lies approximately 1/2 mile from two existing subdivisions, Klamath Forest Estates to the East and Yonna Woods to the West. Although the area is rural in nature, many houses have been developed and built in the area.

7. Adjacent and surrounding zoning consists of Forest/Range to the North, East and West and EFU-CG to the South.

8. Public facilities and services to the property include water by individual well, sewer by individual subsurface system, fire district protection by Bly Mountain and electricity by Pacific Power & Light. The school district serving the property is Klamath County School District.

9. The Fish and Wildlife Department submitted a brief letter indicating that further development in the area would reduce wildlife, especially deer. The area currently is classed as Low Density Deer Winter Range. Testimony presented at the hearing indicated that, although deer occasionally transgress this property as well as other properties in the area, they do not use the area for feeding purposes and their continued use of the area apparently has not been deterred by the development of numerous residences within the area.

KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

See Exhibit "B" attached hereto and incorporated by this reference.

KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

1. GOAL 1 - Citizen Involvement: See Exhibit "A" attached hereto and incorporated by this reference.

2. GOAL 2 - Land Use Planning: See Exhibit "A".

3. GOAL 5 - Open Space, Scenic and Historic Areas and Natural Resources: See Exhibit "A".

4. GOAL 7 - Natural Disaster and Hazards Area: See Exhibit "A".

5. GOAL 11 - Public Facilities and Services: See Exhibit "A".

4. GOAL 12 - Transportation: See Exhibit "A".

5. GOALS 3, 4, 6, 8, 9, 10, 13 and 14 do not pertain or are not affected by this application.

KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

1. No evidence was presented as to the compatibility of this use with forest uses. Therefore, it is found not to be

1 compatible.

2 2. No evidence was presented that the proposed use
3 does not seriously interfere with accepted forestry practices on
4 adjacent lands devoted to forestry use nor was evidence presented
5 that it does not significantly increase the cost of forestry
6 operations on such lands. Therefore, this criteria is found not
7 to be met.

8 3. The proposed use does not appear to materially
9 alter the stability of the overall land use pattern in the area
10 as there are numerous residences on established subdivisions to
11 the West and East.

12 4. There is no evidence presented as to whether this
13 land was generally unsuitable for production of forest crops or
14 livestock. Therefore, this criteria is found not to have been
15 met.

16 5. No evidence was presented indicating that the
17 proposed use had considered forest site productivity nor the
18 minimization of loss of productive forest lands, nor was there
19 evidence presented that the proposed use was limited in size to
20 the area suitable and appropriate to the needs of the proposed
21 use. Therefore, this criteria is found not to have been met.

22 6. There is no evidence presented as to whether the
23 proposed use meets the standards relating to the availability of
24 fire protection as contained in Article 69 of the Code.
25 Therefore, this criteria has not been met.

26 7. Although the use is conditionally permitted within
27 the zone, since the applicant has not addressed the criteria set
28 forth in Section 51.021(D), I cannot find that the location,

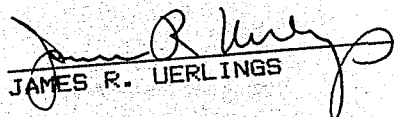
1 size, design and operating characteristics of the proposed use
2 are in conformance with the Klamath County Comprehensive Plan nor
3 can I find that the development will not have significant adverse
4 effects upon the appropriate development and use of abutting
5 properties in the surrounding neighborhood.

6 CONCLUSIONS OF LAW AND DECISION:

7 1. This request for a conditional use permit on the
8 subject property is denied as it does not meet the applicable
9 Klamath County Development Code criteria and policies governing
10 such.

11 2. IT IS ORDERED that the applicant will have one year
12 within which to request a supplemental hearing wherein specific
13 evidence can be presented on the criteria set forth above. No
14 filing fee should be charged by the Klamath County Planning
15 Department upon such application for re-hearing.

16 DATED this 17 day of February, 1987.

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19 JAMES R. UERLINGS
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Conformance with Relevant Klamath County Policies:

Goal 1 - Citizen Involvement:

A public hearing on this matter has been set for September 25, 1986. Notice has been sent to surrounding property owners, concerned public agencies, posted in public places, and published in the Herald & News.

Goal 2 - Land Use Planning:

The property is zoned for forest use. The Hearings Officer must find the application for a non-forest homesite complies with Section 51.021(D) of the Land Development Code.

Goal 4 - Forest Lands:

Relevant Policies:

1. The following lands shall be designated forestry and shall be subject to the regulations of the Forestry and Forest/Range zones contained in the Land Development Code:
 - (1) Public or private industry forest lands located contiguously in large blocks, i.e., National Forest Service, BLM, Weyerhaeuser, Gilchrist timber lands;
 - (2) Significant wildlife and fishery habitat areas;
 - (3) Land having a predominant timber site productivity rating of I-VI;
 - (4) Isolated pockets of land within forest areas which do not meet the above criteria;
 - (5) Lands needed for watershed protection of recreation;
 - (6) Lands where extreme conditions or climate, soil and topography require the maintenance of vegetation cover irrespective of use;
 - (7) Other lands needed to protect farm or forest uses on surrounding designated agricultural or forest lands.
3. Existing forest uses shall be protected unless proposed land use changes are in conformance with the Klamath County Comprehensive Plan.
4. The County shall regulate development of non-forest uses in forested areas.

Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources:

The Oregon Department of Fish and Wildlife has identified this area as a low density deer winter range.

Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources
Continued:

Land Development Code Section 83.005(1) requires a maximum density of 1 D.U./40 acres (if clustered). The parcel size covered by this request is 38.2 acres.

Goal 7 - The County shall consider site constraints in evaluating land use in fire hazard areas.

The Conditional Use Permit site is within the Bly Mountain Fire District. There appears to be no other known natural disaster or hazard areas in the vicinity of the proposed Conditional Use Permit.

Goal 11 - Public Facilities and Services:

This area is in the ~~Kono~~ ^{BONANZA} School District. Water and sanitary facilities are provided by individual wells and septic systems. Power and telephone facilities also serve the area.

Goal 12 - Transportation:

This project will have access off of Goldfinch Drive. This road is user maintained via a road maintenance district and is able to carry the kind of traffic that would be generated from the proposed use.

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Section 51.021(D) allows single-family residential use in the F/R (Forest/Range) zone subject to the following criteria:

E. CONDITIONAL USE PERMIT CRITERIA

1. The uses conditionally permitted shall be subject to review in accordance with the following criteria. The review authority must find that each such use:
 - a. is compatible with forest uses;
 - b. does not interfere seriously with the accepted forestry practices on adjacent lands devoted to forest use; and does not significantly increase the cost of forestry operations on such lands;
 - c. does not materially alter the stability of the overall land use pattern of the area;
 - d. is situated on generally unsuitable land for the production of forest crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of tract;
 - e. considers forest site productivity, minimizes the loss of productive forest lands; and is limited in size to the area suitable and appropriate to the needs of the proposed use;
 - f. meets the standards relating to the availability of fire protection as set forth in Article 69 of this Code and other rural services and will not overtax those services, and;
 - g. complies with such other conditions as the review authority considers necessary to protect forest use.

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Planning Department Narrative and Recommendations Continued:

Staff recommends the Hearings Officer approve the request as the construction of the non-forest home as proposed does conform to the above criteria, and based on the following findings:

- A. That the use is conditionally permitted in the zone in which it is proposed to be located.
- B. That the location, size, design, and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan.
- C. 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. Consideration shall be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effects, if any, upon desirable neighborhood characteristics and livability; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

Subject to siting standards as specified in Land Development Code Section 51.021 F:

- 1. Where possible, residences shall maintain a setback of fifty (50) feet from adjoining property lines (subject to 7(a) below).
- 2. No dwelling shall be located closer than seventy-five (75) feet from the front property line. Front line setback is measured from the center of the roadway (subject to 7(a) below).
- 3. Domestic water supplies for all development within the designated zone shall emanate from surface or subsurface water sources contained within the boundary of the property in question.
- 4. Fuelbreaks between a residence and the forest zone shall be required.
- 5. The homeowner shall maintain an adequate water supply and the appropriate fire fighting equipment to contain fire from spreading to surrounding forest lands.

Planning Department Narrative and Recommendations Continued:

6. The standards contained in Section 83.010 - Compatibility Siting Criteria for Big Game Winter Range Areas.
7. Residence complied with the following conditions, as the approving authority considers necessary, to conserve resource lands or resolve conflicts between the proposed dwelling and adjacent farm and/or forest uses:
 - a. The dwelling shall be sited no closer than 100 feet from all other lot lines;
 - b. The dwelling is sited on lands least suitable for farm or forest use.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
 of February A.D., 19 87 at 8:49 o'clock A M., and duly recorded in Vol. M87,
 of Deeds on Page 2694

FEE NO FEE

Evelyn Biehn, County Clerk
 By [Signature]