

76128

Vol. 1487 Page 11030

BEFORE THE KLAMATH COUNTY PLANNING COMMISSION
KLAMATH COUNTY, OREGON

IN THE MATTER OF A REQUEST TO)
SUBDIVIDE LAND KNOWN AS TRACT)
1234, DEER KNOLL, FOR)
EDWARD J. SHIPSEY)

O R D E R

I. NATURE OF APPLICATION

A public hearing was held on this matter on June 16, 1987, pursuant to notice given in conformity with Ordinances No. 44 and No. 45. This hearing was held before the Klamath County Planning Commission.

This request for a subdivision in a rural (R-1) zone was considered pursuant to Article 46 of the Land Development Code.

II. NAMES OF THOSE INVOLVED

The applicant, EDWARD J. SHIPSEY, was present at the hearing and did not testify in support of the application but only testified to the procedural due process of the hearing. The Planning Department was present, represented by Director, Roy R. Huberd, and Senior Planner, Kim Lundahl. Administrative Secretary, Karen Burg, was the recording secretary. Robert Boivin, Legal Counsel, was also present. There was testimony submitted by both the proponent and opponents.

Proponent testifying was:

1. John Schoonover, representing himself.

Opponents testifying were:

1. Attorney Tim Bailey, representing Richard Bergstrom, Carol Patzkowsky and others in the Keno area.

ORDER, Page 1.

BOIVIN & UERLINGS, P.C.
ATTORNEYS AT LAW
110 NORTH SIXTH STREET, SUITE 209
KLAMATH FALLS, OREGON 97601
(503) 884-8101

2. Attttorney William Brandsness representing Shamrock Development.

3. Mr. Jeff Heston.

4. Mr. David Korzan.

Written data was submitted from the following organizations and individuals:

Exhibit G - Letter from Oregon Department of Fish and Wildlife dated 5-5-87;

Exhibit G-1 - Letter from Oregon Department of Fish and Wildlife dated 6-16-87;

Exhibit J - Letter from Attorney William Ganong dated 5-22-87;

Exhibit K - Letter from E. J. Shipsey dated 5-26-87;

Exhibit M - Letter from E. J. Shipsey dated 6-16-87;

Exhibit N - Letter from the Oregon Department of Forestry dated 6-11-87;

Exhibit O - Letter from Keno Rural Fire Protection District dated 6-8-87;

Exhibit P - Letter from Carol Patzkowsky and Richard Bergstrom dated 6-13-87;

Exhibit R - Map submitted by Attorney William Brandsness.

III. LEGAL DESCRIPTION

The property is located approximately one-half mile southwest of the Keno-Worden Road and approximately 3.5 miles south of Keno. The legal description: located in the NE1/4 SW1/4 of Section 20, Township 40S, Range 8 EWM, Tax Lot 7400.

ORDER, Page 2.

IV. RELEVANT FACTS

The property has a Rural plan designation with an implementing zone of R-1 (Rural-one acre minimum).

The property is 20 acres in size and rectangular. The topography is generally flat. The vegetation is sagebrush, scattered juniper, pine and native grass. The area is not being used for agricultural purposes. The SCS Soil Class is V. The timber site productivity rating is VI. The surrounding lands in the immediate area are subdivided into lots ranging in size from 1.5 to 20 acres in size.

Access will be off an existing road in Cedar Trails Subdivision. This road, named Overland Drive, is cindered.

The public facilities and services are:

- A. Schools: Keno-Henley School District
- B. Recreation: NA
- C. Sewer: Individual septic
- D. Water: Individual well
- E. Utility Districts: Pacific Power and Light and Pacific Northwest Bell
- F. Fire Districts: Keno Rural Fire Protection District.

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

- Exhibit A - Staff Report
- Exhibit B - Tract Map 1234
- Exhibit C - Assessor's Map
- Exhibit D - Hydrology Report
- Exhibit E - Photographs

1 Exhibit F - Map showing deer winter range/secondary
2 boundary

3 Exhibit G - Letter from Department of Fish and Wildlife
4 dated 5-5-87

5 Exhibit G-1 - Letter from Department of Fish and
6 Wildlife dated 6-16-87

7 Exhibit H - History

8 Exhibit I - Code Requirements

9 Exhibit J - Letter from William Ganong dated 5-22-87

10 Exhibit K - Letter from E. J. Shipsey dated 5-26-87

11 Exhibit L - Acreage Exhibit

12 Exhibit M - Letter from E. J. Shipsey dated 6-16-87

13 Exhibit N - Letter from Department of Forestry dated
14 6-11-87

15 Exhibit O - Letter from Keno Rural Fire Protection
16 District dated 6-8-87

17 Exhibit P - Patzkowsky/Bergstrom Letter dated 6-13-87

18 Exhibit Q - Keno RSC Map

19 Exhibit R - Map submitted by Shamrock Development

20 V. RELEVANT APPROVAL CRITERIA

21 Refer to pages 5 through 11 of the Staff Report
22 attached hereto for conformance with relevant Klamath County
23 policies.

24 Subdivision review criteria as listed in the Land
25 Development Code under Article 46, sub 003 Review Criteria
26 states:

27 The preliminary plat of a proposed subdivision may be
28 approved only if the reviewing authority finds that it satisfies
the following criteria:

ORDER, Page 4.

1 A. The preliminary plat of the proposed subdivision
2 is in conformance with the Klamath County Comprehensive Plan;

3 B. The preliminary plat of the proposed subdivision
4 is in conformance with all applicable provisions of this Code,
5 other county codes and ordinances and State Law;

6 C. The future street plan for the proposed
7 subdivision will permit its development in accordance with this
8 Code;

9 D. The future street plan for the proposed
10 subdivision will permit the development of adjoining land or is
11 provided access that will allow its development in accordance
12 with this Code;

13 E. The site of the proposed subdivision is physically
14 suitable for the type and density of the proposed development;

15 F. The existing sewer and water facilities and
16 existing fire protection services are adequate to serve the
17 proposed development.

18 V. FINDINGS

19 1. No testimony or exhibits were introduced by
20 applicant other than a tract map (Exhibit B), a hydrology report
21 (Exhibit D) and letters from E. J. Shipsey (Exhibits K and M).

22 2. The Oregon Dept. of Fish and Wildlife objected to
23 one acre lots proposed within the Bear Valley Bald Eagle Refuge
24 and secondary buffer zone which require a 20-acre minimum lot
25 size. The Oregon Dept. of Fish and Wildlife also objected to the
26 one-acre density within the Pearson Butte low/medium deer winter
27 range which requires an 80 to 40 acre minimum lot size. The
28 record indicated that applicant had not met with the Oregon Dept.
of Fish and Wildlife to discuss a mutually acceptable management
plan.

3. Code Section 83.004C(2) provides that if the
applicant cannot agree on a management plan, then applicant must
meet the following criteria:

If the responsible agency and the applicant cannot
agree on a management plan which would allow for both resource
preservation and development, the following findings of fact, if
applicable to the disagreement must be made:

///

ORDER, Page 5.

1 A. The resource or site must be disturbed to
2 provide for reasonable use of the site, and if not disturbed, the
3 applicant would be substantially damaged;

4 B. The use proposed will directly benefit the
5 community and satisfies a substantial public need or provides for
6 a public good which clearly outweighs retention of the resource;

7 C. The proposed development would not result in
8 the loss of a rare, irretrievable, or irreplaceable natural
9 feature or scientific opportunity, or the disturbance of a
10 substantially unaltered natural feature or area in or adjacent to
11 the proposed site, unless the benefit to the public from the
12 proposed use clearly outweighs the public good from retaining the
13 feature or area;

14 D. The public benefit due to the development of
15 the particular site would be maximized when compared to
16 development of similar properties in the area not possessing a
17 unique site or resource;

18 E. The identified site or resource cannot be
19 physically developed for an energy source or has a low potential
20 for an energy development based upon an evaluation of
21 environmental, social and economic factors;

22 F. The proposed development will disturb or
23 destroy only an area or areas of low preservation value, and will
24 not significantly alter or disturb other portions of the resource
25 area on or adjacent to the site;

26 G. In big game winter ranges, the cumulative
27 effect of the proposed land use change and other development in
28 the area must be consistent with the maintenance of long term big
game habitat values.

16 The applicant presented no evidence to address the
17 above criteria.

18 4. The proposed development is located in a medium
19 fire hazard area. The State of Oregon Dept. of Forestry (Exhibit
20 N) and the Keno Rural Fire Protection District (Exhibit O)
21 expressed concerns regarding fire safety. Code Section 69.004
22 provides as follows:

23 Section 69.004 - REVIEW AND APPROVAL

24 In approving applications for development in fire
25 hazard areas as defined in Section 69.002, the
26 review authority shall incorporate the suggested
fire protection measures as conditions of
approval.

27 Applicant offered no evidence which addressed those concerns.

28 5. Applicant produced no evidence to respond to the
ORDER, Page 6.

1 subdivision review criteria set forth in Land Development Code
2 Section 46.003.

3
4 VII. CONCLUSIONS

5 1. Applicant has not addressed the relevant portions
6 of the Comprehensive Plan, specifically all Goal 5 policies
7 relating to the Bear Valley secondary buffer zone and Pearson
8 Butte deer winter range.

9 2. Applicant has not addressed the fire safety
10 concerns set forth in Section 69.004 of the Klamath County Land
11 Development Code and those set forth under Goal 7 of the
12 Comprehensive Plan.

13 3. Applicant has not produced any evidence to address
14 the subdivision criteria in Klamath County Land Development Code
15 Section 46.003.

16 4. The burden of proof is on the applicant to come
17 forward with evidence required to address the above criteria.

18 VIII. ORDER

19 Therefore, it is hereby ordered that the request for
20 subdivision Tract 1234, Deer Knoll, be denied.

21 DATED this 24th day of June, 1987.

22 CHAIRMAN OF PLANNING COMMISSION

23 [Signature]

24 SECRETARY TO THE PLANNING
COMMISSION

25 [Signature]

26 APPROVED AS TO FORM AND CONTENT:

27 [Signature]
LEGAL COUNSEL

28 ORDER, Page 7.

COMPREHENSIVE PLAN POLICIES AND STATE
LAND USE GOALS 1 - 14

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GOAL NO. 1 - Citizen Involvement

☒ Complies ☐ Does not Comply☐ Complies with conditions☐ Not applicable

Relevant Policies:

"The County shall provide for continued citizen involvement opportunities."

Goal Issues:

Notification was sent to agencies of concern, owners within 250 feet of the site, the Herald and News, and posted in public places.

GOAL NO. 2 - Land Use Planning

☐ Complies ☐ Does not comply☒ Complies with conditions☐ Not applicable

Relevant Policies:

Article 56
Major/Minor Partition
Section 56.003 Review Criteria

	Complies	Does not Comply	N.A.
A -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Goal Issues:

The Plan Designation is Rural Residential, with a zone of R-1. The purpose of this zone is to establish areas for rural residential living styles. These areas allow for the pursuit of limited agricultural activities. These zones also serve to implement the Comprehensive Plan policy calling for buffers between urban and agricultural areas.

Typically, the zone is appropriate in rural or semi-rural areas, small family farm areas, and in areas with a pattern of one acre rural residential development. This zone may be applied where existing or proposed public facilities or services are appropriate for a one-acre

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density, or where there is no history of subsurface sewage problems, water problems, or other natural limitations. This zone is intended to implement the Comprehensive Plan designation of rural. This zone may be applied to rural lands, rural communities, and rural service centers.

Applicant also requests one excessive cul-de-sac length variance. Applicant's design is limited due to the fact that this 20-acre piece of property is completely surrounded by a platted subdivision. Applicant is giving access to this subdivision off of an improved road in the surrounding Cedar Trails subdivision. Due to the shape of the property and the location of existing roads in the subdivision, the excessively long cul-de-sac was designed. This hardship was not created by any act of the owner.

A variance shall be granted only upon finding by the review authority that it satisfies the following criteria:

1. That a literal enforcement of this Code would result in practical difficulty or unnecessary hardship. The difficulty or hardship may arise from the property's size, shape, or topography, from the location of lawfully existing buildings and improvements, or from personal circumstances which would result in greater private expense than public benefit of strict enforcement.
2. That the condition causing the difficulty was not created by the applicant.
3. That the granting of the variance will not be detrimental to the public health, safety, and welfare or to the use and enjoyment of adjacent properties and will not be contrary to the intent of this Code.

GOAL NO. 3 - Agricultural Lands

- ☐ Complies ☐ Does not Comply
☐ Complies with conditions
☒ Not applicable

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Relevant Policies:

Goal Issues:

Legislatively rezoned to R-1 by Klamath County and acknowledged by the State.

GOAL NO. 4 - Forest Lands

- ☐ Complies ☐ Does not Comply
☐ Complies with conditions
☒ Not applicable

Relevant Policies:

Goal Issues:

Legislatively rezoned to R-1 by Klamath County and acknowledged by the State.

GOAL NO. 5 - Open Space, Scenic and Historic Areas, and Natural Resources

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☐ Complies ☐ Does not Comply

☒ Complies with conditions

☐ Not applicable

Relevant Policies:

11, 12, 13, 14, 16 (see page 7a and page 7b)

Goal Issues:

The site is inside a medium/low density deer winter range and the secondary boundary of the Bear Valley Bald Eagle Refuge. See additional Goal 5 policies.

GOAL NO. 6 - Air Water and Land Resource Quality

☐ Complies ☐ Does not Comply

☒ Complies with Conditions

☐ Not applicable

Relevant Policies:

4. "Urban and rural residential use shall be designated only when approved sewage disposal alternatives have been identified."

Goal Issues:

A statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed plat where the Klamath County Department of Health Services or Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755(1)(b). A copy of any such statement, signed by the subdivider and endorsed by the city or county shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385. (continued on page 7c)

11. POLICY: The County shall promote through Goal 5 Significant Overlay Zone Ordinances the prudent management of significant fish and wildlife habitats in mutual cooperation with appropriate State and Federal agencies.

Rationale:

- o To protect and preserve the wildlife resources of the County for present and future generations.

Implementation:

- o The County will cooperate with private landowners and other Oregon State agencies, and advise applicants of coordination needs.
- o If a proposed land use change falls within a significant fish or wildlife area, the applicant shall be encouraged to contact the Oregon Department of Fish and Wildlife to attempt to resolve possible conflicts.

12. POLICY: The County shall recognize the ongoing attempts by the U. S. Fish and Wildlife Service and private property owners to establish a Bald Eagle refuge at Bear Valley, and further encourages equitable solutions.

Rationale:

- o To resolve major land use conflicts between public agencies and private property owners.

Implementation:

- o The County shall encourage cooperative management agreements between both public and private interests which address the needs of both.

13. POLICY: The County shall protect the Bear Valley eagle roosting area (core primary and secondary buffers) and flyway.

Rationale:

- o To protect the bald eagle and its habitat for present and future generations.

Implementation:

- o The proposed refuge boundary, secondary buffer zone and flyway shall be designated as significant natural resources and placed in the Significant Resource Area.
- o The Bald Eagle Management Guidelines adopted by Resolution, August 18, 1982, shall be adopted as part of the Atlas. Administration of lands within the proposed refuge boundary shall be managed as closely as possible to the advisory guidelines of the Bald Eagle Management Guidelines.
- o Density in the secondary buffer zone will be no greater than one unit per 20 acres.

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- o All conflicting uses within the proposed refuge boundary shall be conditional uses unless the County ministerially finds after consultation with the responsible agency that such a procedure is unnecessary as a mitigation measure for the protection of the resource. Resource zoning and zone densities protect the flyway and secondary buffer from conflicting uses.

14. POLICY: The County shall protect bald eagle nest sites.

Rationale:

- o To protect the bald eagle and its habitat for present and future generations.

Implementation:

- o Bald eagle nest sites, primary zones, and a secondary buffer zone shall be placed in a Significant Resource Overlay.
- o The nest site and primary and secondary buffer zones shall be managed as closely as possible to the advisory guidelines of the Bald Eagle Management Guidelines.
- o All conflicting uses within the primary and secondary buffer zones shall be conditional uses subject to the review procedures of Article 44 unless the Planning Director or his designee ministerially finds after a consultation with the Oregon Department of Fish and Wildlife that such a procedure is unnecessary as a mitigation measure for the protection of the resource.

16. POLICY: The County shall protect significant big game winter ranges and other significant wildlife habitat.

Rationale:

- o To maintain wildlife habitat and wildlife for future generations.
- o To maintain the valuable economic resource provided by hunting.

Implementation:

- o The Significant Resource Overlay shall be applied to big game winter ranges, the antelope range north of Bly, and the significant wetland areas.
- o Densities within big game winter ranges shall be limited.
- o Siting criteria aimed at reducing the impact of development in winter ranges shall be considered when development is proposed in significant big game winter ranges.

Goal No. 6 - continued

Subdivisions in rural areas may utilize either a central water supply system or individual wells at the option of the developer. If a central water system is to be provided, it must be inspected and approved by the County Health Services Department or the Oregon State Health Division and County Engineer prior to the issuance of any building permits. If a central water system is not to be provided, concurrent with the submission of a preliminary plat the developer must submit a written hydrology report prepared by a registered engineer documenting the quantity and quality of water in the vicinity based on the general history of wells in the area.

GOAL NO. 7 - Natural Disaster and Hazards Area

11044

☒ Complies ☐ Does Not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

1. "The County shall consider site constraints in evaluating land use in fire hazard areas."

Goal Issues:

This area has a medium Wildfire Hazard Rating but is served by the Keno Fire District. There are no other natural disasters or hazards in the vicinity of the proposed subdivision.

GOAL NO. 8 - Recreation Needs

☒ Complies ☐ Does Not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

Goal Issues:

It is assumed that regional park needs are satisfied by nearby national forest and park lands.

GOAL NO. 9 - County Economy

11045

- ☒ Complies ☐ Does not Comply
☐ Complies with conditions
☐ Not applicable

Relevant Policies:

Goal Issues:

Some employment and sales of materials could be stimulated if houses are constructed or mobile homes purchase. The subdivider could realize economic gain from the sale of subdivision lots. The tax base of the county will be increased as lots are sold and improvements added.

GOAL NO. 10 - Housing

- ☒ Complies ☐ Does not Comply
☐ Complies with conditions
☐ Not applicable

Relevant Policies:

4. "The County shall permit the development of rural land for rural residential use on suitable lot sizes."

Goal Issues:

The proposed subdivision conforms to the minimum lot size of the R-1 zone. Applicant is proposing 18 lots on 20 acres.

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GOAL NO. 11 - Public Facilities and Services

- ☒ Complies ☐ Does not Comply
☐ Complies with conditions
☐ Not applicable

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Relevant Policies:

Goal Issues:

This area is served by a school district and fire district. Water and sanitary facilities will be provided by individual wells and septic systems. Electric and telephone facilities can be provided by Pacific Power and Light and Northwest Bell. A hydrology report documenting the availability of water to this subdivision has been received for the planning Commission review.

GOAL NO. 12 - Transportation

- ☒ Complies ☐ Does not Comply
☐ Complies with conditions
☐ Not applicable

Relevant Policies:

Goal Issues:

This area has access off of Overland Drive, a public road which connects with the Keno-Warden Road, a paved county road. This county road gives access onto Highway 97 approximately 3.5 miles to the south and onto Highway 66 approximately 3.5 miles to the north.

GOAL NO. 13 - Energy Conservation

- ☒ Complies ☐ Does Not Comply
☐ Complies with conditions
☐ Not applicable

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Relevant Policies:

Goal Issues:

This area lies approximately 3.5 miles from Keno, Oregon, where limited goods, services, and employment are available.

GOAL NO. 14 - Urbanization

- ☐ Complies ☐ Does not Comply
☐ Complies with conditions
☒ Not applicable

Relevant Policies:

Goal Issues:

This site lies approximately 17 miles from the Urban Growth Boundary of Klamath Falls.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 25th day
of June A.D. 19 87 at 9:03 o'clock A.M., and duly recorded in Vol. M87
of Deeds on Page 11030

FEE NO FEE

Return: Commissioners' Journal

Evelyn Biehn,

By Ann Smith County Clerk