

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGON

78329

Vol. M87 Page 14991

IN THE MATTER OF APPEAL OF)
PLANNING COMMISSION DECISION)
AND REMAND BACK TO THE)
PLANNING COMMISSION FOR)
TRACT 1234 FOR EDWARD SHIPSEY)

ORDER # 88-119

I. NATURE OF THE APPLICATION

A hearing was held on this matter on July 28, 1987, pursuant to notice given in conformity with Ordinances No. 44 and No. 45. This hearing was held before the Klamath County Board of Commissioners.

The request was for an appeal from the Planning Commission decision of denial based on "Prejudice of the Planning Commission, misrulings of Planning Commission chairman, letters from ODFW, State Forestry, Keno Fire Department and Mr. Patzkowski delivered at the Planning Commission meeting and the authors were not available for questioning."

II. NAMES OF THOSE INVOLVED

The applicant, Edward Shipsey and his representative Steven Zamsky were present at the hearing and testified. Mr. John Schoonover also testified in favor of the appeal. The Planning Department staff was present, represented by Roy R. Huberd. The Klamath County Counsel, Mike Spencer was present. Opponents testifying were:

1. Attorney Tim Bailey, representing Richard Bergstrom, Carol Patzkowsky, and others in the Keno area.
2. Attorney Andy Brandsness representing Shamrock Development Company also testified.

///

///

45 8 AUG 20 AM 8 54

1 III. LEGAL DESCRIPTION

14992

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

7 IV. RELEVANT FACTS

8 As outlined in the order dated June 24, 1987, the facts are
9 as follows: The property has a Rural Plan designation with an
10 implementing zone of R-1 (Rural, One-Acre minimum).

11 The property is rectangular, 20 acres in size. The topo-
12 graphy is generally flat. The vegetation is sagebrush, scattered
13 juniper, pine and native grass. The area is not being used for
14 agricultural purposes. The SCS Soil Class is V. The Timber
15 Site Productivity Rating is VI. The surrounding lands in the
16 immediate area are subdivided into lots ranging in size from
17 1.5 to 20 acres in size.

18 Access will be off an existing road in Cedar Trails Sub-
19 division. The road, named Overland Drive, is cindered.

20 The public facilities and services are:

- 21 A. Schools: Keno-Henley
- 22 B. Recreation: NA
- 23 C. Sewer: Individual sptic
- 24 D. Water: Individual well
- 25 E. Utility Districts: Pacific Power and Light and Pacific
- 26 Northwest Bell Telephone
- 27 F. Fire Districts: Keno Rural Fire Protection District
- 28 ///

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

- 3 Exhibit A - Staff Rport
- 4 Exhibit B - Tract Map 1234
- 5 Exhibit C - Assessor's Map
- 6 Exhibit D - Hydrology Report
- 7 Exhibit E - Photographs
- 8 Exhibit F - Map showing deer winter range/secondary boundary
- 9 Exhibit G - Letter from the Department of Fish and Wildlife
dated 5-05-87.
- 10 Exhibit G-1 - Letter from Department of Fish and Wildlife
dated 6-16-87.
- 11 Exhibit H - History
- 12 Exhibit I - Code Requirements
- 13 Exhibit J - Letter from William Ganong dated 5-22-87
- 14 Exhibit K - Letter From E.J. Shipsey dated 5-26-87
- 15 Exhibit L - Acreage Exhibit
- 16 Exhibit M - Letter from E.J. Shipsey dated 6-16-87
- 17 Exhibit N - Letter from the Department of Forestry dated
6-11-87
- 18 Exhibit O - Letter from the Keno Rural Fire Protection
District 6-8-87
- 19 Exhibit P - Patzkowsky/Bergstrom letter dated 6-13-87
- 20 Exhibit Q - Keno RSC Map
- 21 Exhibit R - Map submitted by Shamrock Development Co.

22 v. RELEVANT APPROVAL CRITERIA

23 As outlined in the order dated June 24, 1987, the approval
24 criteria are as follows: Refer to pages 5 through 11 of the staff
25 Page 3 - Shipsey

14934

1 Report attached hereto for conformance with relevant Klamath
2 County Policies.
3 Subdivision criteria as listed in the Land Development Code
4 under Article 46, Sub 003 Review Criteria states:
5

6 The preliminary plat of the proposed subdivision may be
7 approved only if the reviewing authority finds that it
8 satisfies the following criteria:

- 9 A. The preliminary plat of the proposed subdivision
10 is in conformance with the Klamath County Comprehensive
11 Plan;
12 B. The preliminary plat of the proposed subdivision
13 is in conformance with all applicable provisions
14 of this Code, other County codes and applicable
15 State law;
16 C. The future street plan for the proposed subdivision
17 will permit its development in conformance with this
18 Code;
19 D. The street plan for the proposed subdivision will
20 permit the development of adjoining land or is
21 provided access that will allow its development
22 in accordance with this Code;
23 E. The site of the proposed subdivision is physically
24 suitable for the type and density of the proposed
25 development;
26 F. The existing sewer and water facilities and existing
27 fire protection services are adequate to serve the
28 proposed development.

18 VI. FINDINGS OF FACT

19 The Board of County Commissioners finds that substantial
20 procedural irregularities occurred at the Planning Commission
21 hearings, including:
22 1. The adjournment of the first hearing without a proper
23 motion.
24 2. Planning Commission members failing either to disqualify
25 themselves when conflicts are raised or failing to identify
26 potential conflicts so as to allow their disqualification.
27 3. Inaccuracies in the record relating to members of the
28 Planning Commission who were present.

VII. CONCLUSION

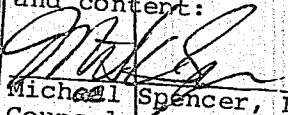
14995

1 These irregularities and other potential errors resulted
2 in the denial of a reasonable opportunity for the applicant to
3 present his case to a Commission having the appearance of fair-
4 ness required by the Rules of Procedure.

5 VIII. ORDER

6 It is hereby ordered that the action of the Planning
7 Commission in denying the applicant's request for a subdivision
8 is remanded to the Planning Commission for further consideration.
9 The Planning Commission shall hold a new hearing on all issues
10 previously raised and shall consider any potential conflicts which
11 should result in a disqualification of any member of the Commis-
12 sion. A complete discussion of such conflicts shall be placed
13 in the record of the preceeding and a vote of the entire Commis-
14 sion shall be made when any member of the Commission declines to
15 withdraw from consideration of the matter. The applicant shall
16 be provided with the opportunity to present evidence on his be-
17 half. Opponents of the subdivision shall also be provided with
18 a similar opportunity and the Applicant shall be allowed the right
19 of rebuttal.
20
21
22
23
24
25
26
27
28

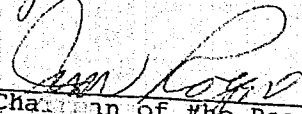
Approved as to form
and content:


Michael Spencer, Legal
Counsel

Page 5 - Shipsey

Done and dated this 12 day of

August, 1987


Chairman of the Board


County Commissioner


County Commissioner

COMPREHENSIVE PLAN POLICIES AND STATE
LAND USE GOALS 1 - 14

14996

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

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.

Page -6-

GOAL NO. 3 - Agricultural 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. 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.

14998

Page -7-

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

- ☐ 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.

- 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

15003

☒ 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

- ☒ 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.

GOAL NO. 11 - Public Facilities and Services

15005

☒ Complies ☐ Does not Comply

☐ Complies with conditions

☐ Not applicable

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

15006

☒ Complies ☐ Does Not Comply

☐ Complies with conditions

☐ Not applicable

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 20th day of August A.D. 19 87 at 8:54 o'clock A M., and duly recorded in Vol. M87 of Deeds on Page 14991.

FEE

NONE

Return

Commissioners' Journal

Evelyn Biehn, County Clerk

By

Ann Smith