

BEFORE THE KLAMATH COUNTY PLANNING COMMISSION
79299
KLAMATH COUNTY, OREGON

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

Vol. 1687 Page 16688

O R D E R

4 I. NATURE OF APPLICATION

5 Public hearings were held on this application August 25, 1987,
6 and September 10, 1987, pursuant to Board Order 88-119, attached,
7 and in conformance with Ordinances No. 44 and 45. The request
8 for a subdivision in a Rural (R-1) zone was considered pursuant
9 to Article 46 of the Land Development Code.

10 II. NAMES OF THOSE INVOLVED

11 The applicant, Edward J. Shipsey, was present and testified
12 in support of the application. Also testifying in support were:
13 Steve Zamsky, applicant's counsel; Ted Paddock; and Barney Oldfield.

14 Opponents testifying were Tim Bailey, representing Richard
15 Bergstrom and Carol Patzkowsky; and Andy Brandsness, representing
16 Shamrock Development Company. The Oregon Department of Fish and
17 Wildlife was represented by Ralph Opp. The County Planning
18 Department was represented by Kim Lundahl, Senior Planner. Karen
19 Burg was the recording secretary. County Legal Counsel, Michael
20 Spencer, was also present.

21 III. RELEVANT FACTS

22 The property has a Rural plan designation with an implement-
23 ing zone of R-1 (Rural, one acre minimum). The property is 20
24 acres in size and rectangular. The topography is generally flat.
25 The vegetation is sagebrush, scattered juniper, pine, and native
26 grass. The surrounding properties are included in the Cedar Trails
27 Subdivision and are divided into lots ranging from 1.5 to 20 acres
28 in size.

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1 Access is off an existing cindered road, Overland Drive.
2 Exhibits A through GG were offered, received, and made a part of
3 the record.

4 IV. FINDINGS

5 1. Considerable testimony and exhibits were introduced by
6 applicant and his counsel to demonstrate compliance with Land
7 Development Code Section 83.004(C)(2).

8 2. The Oregon Department of Fish and Wildlife objected to
9 one acre lots proposed within the Bear Valley Eagle Refuge Flyway
10 and secondary buffer zone, an overlay requiring a twenty acre
11 minimum lot size. The Department also objected to the one acre
12 density within the Pearson Butte Low/Medium Deer Winter Range
13 which requires a 40 to 80 acre minimum lot size.

14 V. CONCLUSIONS

15 After considering evidence and testimony, it was moved and
16 seconded at the August 25, 1987 hearing:

17 The Planning Commission approve Tract 1234 for Mr. Ed Shipsey
18 based on the Staff Report, conformance to criteria set out in
19 Land Development Code Section 83.004(A-G) and Exhibits A-GG, and
20 subject to meeting with the Keno Rural Fire Department and come
21 to agreement concerning structural fire protection.

22 The vote at the August 25, 1987 hearing was three in favor
23 and three opposed. The tie vote resulted in a continuance to
24 September 10, 1987 to permit a seventh Commission member time to
25 review the record.

26 At the continued hearing, the seventh Commission member voted
27 against the motion.

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1 VI. ORDER

2 Therefore, it is hereby ordered the request for subdivision
3 Tract 1234, Deer Knoll, be denied.

4 Dated this 14th Day of September, 1987.

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6
7 PRESIDING OFFICER OF THE PLANNING COMMISSION

8 Susan H. Cusmon

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10 SECRETARY TO THE PLANNING COMMISSION

11 R. R. Loo

12
13 APPROVED AS TO FORM AND CONTENT

14 Michael Spencer
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County Legal Counsel

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGON

16691

ORDER # 88-119

1 IN THE MATTER OF APPEAL OF)
2 PLANNING COMMISSION DECISION)
3 AND REMAND BACK TO THE)
4 PLANNING COMMISSION FOR)
5 TRACT 1234 FOR EDWARD SHIPSEY)

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6 I. NATURE OF THE APPLICATION

7 A hearing was held on this matter on July 28, 1987, pursuant
8 to notice given in conformity with Ordinances No. 44 and No. 45.
9 This hearing was held before the Klamath County Board of Commis-
10 sioners.

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

17 II. NAMES OF THOSE INVOLVED

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

- 24 1. Attorney Tim Bailey, representing Richard Bergstrom,
25 Carol Patzkowsky, and others in the Keno area.
26 2. Attorney Andy Brandsness representing Shamrock Develop-
27 ment Company also testified.
28

1 III. LEGAL DESCRIPTION

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 septic

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

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

3 Exhibit A - Staff Report

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
10 dated 5-05-87.

11 Exhibit G-1 - Letter from Department of Fish and Wildlife
12 dated 6-16-87.

13 Exhibit H - History

14 Exhibit I - Code Requirements

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

16 Exhibit K - Letter From E.J. Shipsey dated 5-26-87

17 Exhibit L - Acreage Exhibit

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

19 Exhibit N - Letter from the Department of Forestry dated
20 6-11-87

21 Exhibit O - Letter from the Keno Rural Fire Protection
22 District 6-8-87

23 Exhibit P - Patzkowsky/Bergstrom letter dated 6-13-87

24 Exhibit Q - Keno RSC Map

25 Exhibit R - Map submitted by Shamrock Development Co.

26 V. RELEVANT APPROVAL CRITERIA

27 As outlined in the order dated June 24, 1987, the approval
28 criteria are as follows: Refer to pages 5 through 11 of the staff
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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 The preliminary plat of the proposed subdivision may be
6 approved only if the reviewing authority finds that it
satisfies the following criteria:

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

27 VI. FINDINGS OF FACT

28 The Board of County Commissioners finds that substantial
procedural irregularities occurred at the Planning Commission
hearings, including:

1. The adjournment of the first hearing without a proper
motion.
2. Planning Commission members failing either to disqualify
themselves when conflicts are raised or failing to identify
potential conflicts so as to allow their disqualification.
3. Inaccuracies in the record relating to members of the
Planning Commission who were present.

VII. CONCLUSION

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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 Done and dated this 12 day of

22 August, 1987

23
24 Approved as to form
25 and content:

26 Michael Spencer, Legal
27 Counsel

28 Chairman of the Board

County Commissioner

County Commissioner

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 15th day
of September A.D., 19 87 at 9:42 o'clock A.M., and duly recorded in Vol. M87
of Deeds on Page 16688

Evelyn Biehn, County Clerk
By Sam Smith

FEE NONE
Return: Commissioners' Journal