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BEFORE THE BOARD OF COMMISSIONERS

Klamath County, Oregon

IN THE MATTER OF VARIANCE
8-87 FOR EDWARD J. SHIPSEY,)

ORDER #88-172

I. NATURE OF APPLICATION

This is a request for a variance for cul-de-sac length of approximately 1,400 feet, as shown on the preliminary plat of Subdivision 1234, over the standard of 1,000 feet set by Klamath Development Code Section 71.014, said variance being processed pursuant to the provisions of Article 43.003.

A hearing was held in the matter before the Planning Commission on October 27, 1987, pursuant to notice thereof given in conformity with Ordinance Nos. 44 and 45. The matter came before the Board of Commissioners pursuant to the appeal of Edward J. Shipsey of the Planning Commission's denial of the request, and was heard on November 24, 1987, pursuant to notice given in conformity with Ordinance Nos. 44 and 45.

The Planning Commission Order erroneously included as the basis for its denial subdivisions A and B of Article 43.003. The Motion for the Order, and discussion on the record, make it clear that the basis for that denial was based solely on sub-paragraph C of said Article.

II. NAMES OF THOSE INVOLVED

The applicant, Edward J. Shipsey, through Steven A. Zamsky, his attorney, was present at the hearing and presented argument before this Board. Bill Hunt testified opposing the application and appeal on

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ZAMSKY & BELCHER
ATTORNEYS AT LAW
SUITE 204, 101 MAIN STREET
KLAMATH, OREGON 97601
(503) 863-7761

1 behalf of the Oregon Department of Forestry. The Planning Department
2 was present represented by Senior Planner, Kim Lundahl, as well as
3 Acting Director, Carl Shuck. Administrative Secretary, Karen Burg, was
4 the recording secretary. Michael Spencer, Legal Counsel, was also
5 present.

6 **III. LEGAL DESCRIPTION**

7 The property is located approximately one-half mile southwest of
8 the Keno-Worden Road and approximately 3.5 miles south of Keno. The
9 legal description is: the NE 1/4 SW 1/4 of Section 20, Township 40
10 South Range 8EWM, Tax Lot 7400, and is the preliminary tract designated
11 as Tract No. 1234, known as Deer Knoll.

12 **IV. RELEVANT FACTS**

13 Before the Board of Commissioners was the record of the testimony
14 presented at the hearing before the Planning Commission on October 27,
15 1987, the form of the transcript and Exhibits "A - L".

16 The property is 20 acres in size and rectangular. The topography
17 is generally flat. The vegetation is sagebrush, scattered pine and
18 native grass. The area is not being used for agricultural purposes.
19 The SCS Soil Class is V. The Timber Site Productivity Rating is VI.
20 The surrounding lands in the immediate area are subdivided into lots
21 ranging in size from 1.5 to 20 acres as the property is located in and
22 completely surrounded by Cedar Trails Subdivision. The property abuts
23 a county road, Overland Drive, on one corner. Other than that corner,
24 the property is landlocked.

25 The property is zoned and approved for one acre lots. The
26 property is within a loop of the road system in Cedar Trails

ZANSKY & BELCHER
ATTORNEYS AT LAW
SUITE 204 - 601 MAIN STREET
KLAMATH FALLS, OREGON 97601
(503) 865-7761

1 Subdivision. The proposed cul-de-sac is necessary in order to develop
2 lots at or near a one acre size and is necessary due to the shape of
3 the lot and its location due to the existing roadways.

4 The establishment of the cul-de-sac would create a firebreak and
5 give access to the entire parcel from County Roads.

6 The Klamath County Public Works Department has no objection to the
7 cul-de-sac length variance. The agency with direct responsibility for
8 fire protection of dwellings is the Keno Rural Fire Protection District
9 which also has no objection to the variance.

10 The State Department of Forestry has as its primary obligation the
11 control of wildfires. They have expressed concern about the cul-de-
12 sac length in terms of the ability of the people living at the end of
13 the cul-de-sac being able to escape in the event of fire. They have no
14 direct testimony that the difference between the 1,000 foot length
15 allowed by the code and the requested 1,400 length creates materially
16 different problems.

17 The tract maps submitted as a part of Exhibit "K" make it clear
18 that cul-de-sac variances equal to or in excess of this variance have
19 been granted in virtually all subdivisions west of Klamath Falls and in
20 or near the Keno area and along Highway 66 toward Klamath Falls.

21 **V. RELEVANT APPROVAL CRITERIA**

22 This request is considered pursuant to the provisions of Section

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1 43.003, and in this case relevant criteria is subsection C which
2 provides:

3 C. That the granting of the variance will not be detrimental
4 to the public health, safety and welfare, or to the use and
5 enjoyment of adjacent property and will not be contrary to the
6 intent of this code.

7 VI. FINDINGS

8 1. The only portion of the criteria which is in question here is
9 that portion of sub-paragraph C which concerns public health, safety,
10 and welfare.

11 2. Because of the location of the loop of existing roads
12 surrounding this property, residents of the property would, in the
13 event of a large fire, be able to escape from the property to the loop.

14 3. The establishment of this cul-de-sac would permit fire
15 suppression vehicles to access virtually all of the total parcel from a
16 public road, which would not be possible if the cul-de-sac were only
17 1,000 feet long.

18 4. The extension of the cul-de-sac length by 400 feet over the
19 permitted 1,000 feet does not create any additional hazard to the
20 public health, safety and welfare.

21 5. Strict standards of the cul-de-sac length have not been
22 enforced by the County but the County has consistently granted
23 variances to that standard throughout this area.

24 6. Possible escape of fire from this property to other properties
25 is not affected by this cul-de-sac. The possibility of such an escape
26 would be reduced by this variance because of the additional access it
provides and the fire break created by the road.

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VII.

Applicant has satisfied the criteria in Section 43.003 for approval of the variance.

VIII. ORDER

Therefore, it is hereby ordered that the request for variance for cul-de-sac length is approved.

Dated this ____ day of December, 1987.

KLAMATH COUNTY BOARD OF COMMISSIONERS

Jim Rogers

Ed Linton

APPROVED AS TO FORM AND CONTENT:

[Signature]
LEGAL COUNSEL

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of
of December

A.D., 19 87 at 3:38 o'clock P M., and duly recorded in Vol. M87 day
of Deeds on Page 23109

FEE None

Evelyn Bienn
By *[Signature]* County Clerk

ORDER
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