BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 78-89 FOR
CLIFFORD BARTLETT TO LOCATE A RESIDENCE NOT IN CONJUNCTION WITH FOREST USE

ORDER

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1. NATURE OF THE REQUEST:

The applicant wishes to establish a single family residence not in conjunction with forest use on 29.0 acres m/l in the Round Lake area.

The request was heard by the Hearings Officer February 23, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 51.020 D 6.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Richard C. Whitlock. The applicant appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Leanne Mitchel, Administrative Secretary.

3. LEGAL DESCRIPTION:

The subject property is a 29 acre m/l parcel located one mile east of the Round Lake Rd., two miles north of the intersection with the Greensprings Hwy.. The parcel is described as a portion of the SE 1/4 section 8, Township 39 south, Range 8, east W. M.. T. A. 3908-8D-200.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by a user-maintained graded and cindered easement road leading a mile east from the County-maintained and paved Round Lake Rd.. This road provides access to seven existing non-resource residences established in the valley.

B. FIRE PROTECTION: The property is within the Keno Rural Fire District and is approximately three miles from the nearest responding station. That distance represents a response time of 18-20 minutes. The applicant has also proposed fuel breaks around the residence to reduce the potential of a structural fire spreading to the surrounding lands.

C. LAND USE: The property is a parcel of approximately 29 acres of undeveloped land. The site has never been logged. The adjacent lands are found not devoted to forestry uses. To the east are four non-resource homes on 3, 8, 20 and 20 acre properties. To the west is property owned by the Weyerhaeuser Company. To the north is a non-resource home on 40 acres. To the south is a non resource home on 16 acres. The immediate surrounding lots vary in size from 3 acres to 40 acres in size.

Within two miles are private lands devoted to forestry uses, i. e. watershed, wildlife habitat and recreation use by occasional hunters. The specific site selected by the applicant for his homesite is a clearing which has never been used for forestry uses.

The property appears on the County's Goal 5 inventory mapping as a "low to medium density deer winter range". Comments from the Oregon Dept. of Fish and Wildlife have been solicited as required by the Code and incorporated into this order.

D. SEWERAGE: The applicant has selected a septic installation location in the southeast corner of the clearing. Site specific site evaluation has been accomplished and approved by letter dated 10-27-89.

E. SLOPE: Available topographic mapping and site inspection indicates

slopes of 0-10% predominate the site.

F. SOILS: The Soil Conservation Service mapping of the site indicates the property is within the "Bly Loam Soil Series". This soil and its properties are set out in the publication SOIL SURVEY OF KLAMATH COUNTY, OREGON on file in the Planning Department.

G. WATER: Proposed well

H. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, south, east and west is Forestry/Forestry. The designation of the Round Lake Estates Subdivision/Golfcourse is R-1.

5. RELEVANT CRITERIA:

The standards and criteria relevant to this application are found in the Klamath County Comprehensive Plan (Goal 4) and the Klamath County Land Development Code, specifically Section 44.003, Section 51.020 and Article 69.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-i, and offered testimony were considered in this Order.

6.1 With regard to the Statewide Planning Goals and the Klamath County Comprehensive Plan, the Hearings Officer makes the following findings:

A. The goal of the Forest Lands Element is to conserve forest lands for the production of wood fiber and other forest uses, protect forest lands from incompatible uses, and to ensure a continued yield of forest products and values.

B. Forest Uses are defined by Statewide Planning Goal 4 and the Comprehensive Plan to include:

1. The production of trees and forest products;

2. watershed protection and wildlife and fisheries habitat;

3. soil protection from wind and water;

4. grazing of livestock;

5. maintenance of clean air and water;

6. outdoor recreational activities

7. open space, buffers from noise, and visual separation of conflicting uses.

FINDING: The Hearings Officer finds that dwellings are not included in the list of forest uses. The Land Development Code does, however, permit residences subject to conditional use findings that the dwelling is located on lands generally unsuitable for timber management and not needed for other permitted forest uses and is otherwise consistent with the County's acknowledged criteria.

C. Policy 4 of the Klamath County Forest Lands Goal states "The County shall regulate development of nonforest uses in forest areas". The "rationale" for such policy is "to protect the health, safety and welfare of County Citizens" and "to reduce fire danger to man-made structures and forest resources".

FINDING: The Hearings Officer finds that active forest management has not occurred on properties directly adjacent to the property. Specifically, there is a substantial residential development within 3/4 mile of the project site. The only legitimate forestry use nearby is farther to the west, across Round Lake Rd. This proposed residence would be adjacent to seven other non-resource dwellings in the valley and, with the proposed fuelbreaks and the readily available fire protection, there is an insignificant risk of fire.

6.2 With regard to the Klamath County Land Development Code, the Hearings Officer makes the following findings:

A. Klamath County Land Development Code Section 44.003-Conditional Use Permit Criteria:

A Conditional Use Permit shall be granted only if the reviewing authority shall find that it satisfies the following criteria, as well as other criteria and standards of this Code and other applicable codes and ordinances.

44.003 A: "That the use is conditionally permitted in the zone in which it is proposed to be located."

FINDING: Section 51.020 D 4 identifies residential-single family or mobile home as a nonforest conditional use.

44.003 B: "That the location, size, design, and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan".

Goal 4, Policy #1 states: The following lands shall be designated forestry and subject to the regulations of the Forestry and Forestry/Range zones contained in the Land Development Code:

1. Public or private industry forest lands located contiguously in large blocks, i. e. Forest Service, BLM, Weyerhaeuser, Gilchrist Timber;
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 or recreation;
6. Other lands needed to protect farm or forest uses on surrounding designated agricultural or forest lands.

Rationale: To preserve the maximum area of productive forest land.

FINDING: The area surrounding the subject property is not in forestry use and the site presents no resource for fisheries habitat nor watershed protection or recreation values. The wildlife habitat considerations are in no way jeopardized as a result of conditions placed on this residence in compliance with O.D.F.W. request.

FINDING: The subject property has a Timber Site Class Rating of 6, thereby meeting the definition of forest land. However, the site chosen for the homesite is clearly not in forest production.

FINDING: The small site is not large enough for legitimate commercial forestry use and presently has no significant forest growth (23 trees). There is no property adjacent to the site which is presently in forestry use. Nearby property is being managed as a forestry resource, but the signing of a restrictive covenant will prohibit the permit holder from interfering with accepted resource management practices on nearby lands.

Goal 4, Policy #4 states: "The County shall regulate development of nonforest uses in forested areas".

Rationale: To protect the health, safety, and welfare of county citizens. And to reduce the fire danger to man-made structures and forest resources.

FINDING: The proposed residence is within an established fire protection district and the response time is 18 to 20 minutes. Access to the property to fight fire is excellent, being on a all-weather road. Further, the applicant has proposed fuelbreaks around the house to prevent the spread of fire to the adjacent properties. The threat of fire spreading to resource properties is found to be mitigated.

44.003 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".

FINDING: Access to the proposal is provided via an easement access road which is a graded, gravelled, user-maintained all weather access road. The road provides access for the proposal and to seven other residences and is not utilized by commercial timber operators or for other forestry uses.

FINDING: The proposal is only three miles from the nearest fire station, and will be accessible during the winter months. The residence will not significantly increase the risk of wildfire impacts to nearby forest land or increase the danger to firefighters.

FINDING: The property is located within the Klamath County School District and will have no impact on the school system. The existence of a new residential use within the district will slightly increase the tax base.

B. Klamath County Land Development Code Section 51.020 E - Non Forest Conditional Use Permit Criteria.

The uses conditionally permitted shall be subject to review in accordance with the following criteria:

1. The proposal is compatible with forest uses;

FINDING: Rural-residential use predominates in all compass directions. Forest uses predominate to the west. The location of a nonforest home on the

existing parcel east of Round Lake Rd. will not compromise the forest values west of the Highway.

2. The proposal does not interfere seriously with the accepted forestry practices on adjacent lands devoted to forestry use, and does not significantly increase the cost of forestry operations on such lands;

FINDING: The adjacent lands to the north, south, and east are found not devoted to forestry uses as set out in state and local goals. The Hearings Officer finds the predominant land use to the east to be rural residential. The closest forestry use lands are to the west of the Round Lake Rd. The location of a non-resource home will not conflict with management practices on those lands. The permit holder will be required to file a restrictive covenant which will prohibit the permit holder and successors in interest from filing complaints concerning valid resource management practices on adjacent lands.

3. The project will not materially alter the stability of the overall land use of the area;

FINDING: The subject parcel was created prior to local ordinance regarding partitioning. The placement of a residence on the property will not destabilize the existing land use pattern of the area as use similar to that proposed has been established in the immediate vicinity (exhibit "h"). Concerns about wildlife habitat are adequately protected as evidenced by the conditions imposed pursuant to O.D.F.W. request.

4. The proposal is located on generally unsuitable land for the production of forest products and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;

FINDING: The project is on a parcel, 29.0 acres, to small to be considered for commercial forest uses. The site is found to be poorly located for forest management activities as it is located amongst parcels already devoted to non-resource use as shown on Exhibit "h". Forest practices may conflict with the established residential uses long established in the area.

5. The proposal considers site productivity, minimizes the loss of productive forest lands; and is limited to the area suitable and appropriate to the needs of the proposed use;

FINDING: Site productivity for noncommercial forest uses may actually be increased due to the presence of an interested landowner. No loss of productive resource lands will result, rather the resident will enhance the noncommercial resource uses of the property through intensive management practices. The applicant states a limited number of domestic animals will be raised on the property for personal use. The Hearings Officer finds the commercial Forestry land base of the County will not be compromised by the permitting of a nonforest home on 29.0 acres.

6. The proposal meets the standards set forth relating to the availability of fire protection and other rural services and will not tax those services;

FINDING: Structural fire protection is provided by the Keno Rural Fire District. In addition, the owner shall adhere to the requirements outlined in Section 51.020 G of the Code, RESIDENTIAL SITING STANDARDS. Other rural services will be minimally impacted by the addition of another residence. Access exists from the existing easement road, a graded, gravelled, user-maintained all-weather road.

7. ORDER:

Therefore, it is ordered the request of Clifford Bartlett for approval of C.U.P. 78-89 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit grantee and successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands devoted to commercial resource use.

2. The applicant must comply with the fire safety and other siting standards of the land use code.

3. The home shall be located as shown on applicants exhibit "b" as reviewed and addressed by the Oregon Dept. of Fish and Wildlife letter dated 1-9-90.

DATED this 6th day of ~~February~~ March, 1990

Richard C. Whitlock

Richard C. Whitlock, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Klamath County Board of Commissioners by filing with the Planning Department a NOTICE OF APPEAL as set out in Section 33.004 of the Code, together with the required fee within TEN DAYS of the date of mailing of this decision. Appeals must be received by the Planning Department no later than 5:00 P.M. on the tenth day or next business day if the tenth day falls on a weekend or holiday. Failure to file a NOTICE OF APPEAL within the time provided will result in the loss of your right to appeal this decision.

CUP 78-89 BARTLETT

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 20th day of March A.D., 19 90 at 10:32 o'clock AM., and duly recorded in Vol. M90 of Deeds on Page 5083.

Evelyn Biehn County Clerk
By Pauline Muellenberg

FEE none

Return: Commissioners Journal