

14035

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 9-90 FOR
DAVID MILLER TO LOCATE A RESIDENCE NOT
IN CONJUNCTION WITH FOREST USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a single family residence not in conjunction with forest use on 32.0 acres m/1 north of Chiloquin.

The request was heard by the Hearings Officer April 6, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 51.020 D 4.

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 Karen Burg, Administrative Secretary.

3. LEGAL DESCRIPTION:

The subject property is a 32 acre strip located in the NE 1/4 Section 28 T 34S R 7E W.M.. Generally located east of Hwy 97 and southwest of the boundary of the Rainbow Park subdivision and north of Chiloquin. T.A. 3407-28A-100.

4. RELEVANT FACTS:

A. ACCESS: The property is adjacent to the Hwy 97 Right-Of-Way, but access is largely precluded directly onto Hwy 97 by access restriction. Access is also provided by Copeland St., which is a graded, gravelled, all-weather, user-maintained road extending to the southern boundary of the property.

'90 APR 25 PM 3 57

B. FIRE PROTECTION: The property is within the Chiloquin/Agency Lake Rural Fire District and is approximately one mile from the nearest responding station. That distance represents a response time of only 5-10 minutes. The applicant has also agreed to fuel breaks(required by L.D.C. sec 51.020 G) around the residence to reduce the potential of a structural fire spreading to the lands to the north, south and east. The highway right-of-way to the west provides a significant fire barrier to the lands west of the property and Hwy 97.

C. LAND USE: The property is a parcel of approximately 32 acres of undeveloped land. The site was logged long ago and has very little second volunteer growth. The adjacent lands to the north, south and east are found not devoted to forestry uses. To the east are the Rainbow Park and Winema Peninsula Subdivisions which consist of approximately 180 lots varying in size from one acre to three acres in size.

The Subdivision presently contains at least 42 residences with the nearest approximately 600 feet to the east of the subject property. To the north of the property is "cut over" timber land not actively managed. To the south of the property is generally residential use. Bordering the western edge of the site is the Hwy 97 right-of-way, 200 feet in width, which is a major north-south transportation corridor. West of Hwy 97 are private lands devoted to forestry uses and residential uses on large properties. The specific site selected by the applicant for his homesite is a 150 foot diameter clearing which has never been used for the production of trees.

D. SEWERAGE: The applicant has selected a septic installation location in the southeast corner of the clearing. Site specific site evaluation has not been accomplished, but available soils information and the existence of

nearby systems indicates site feasibility.

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 a land capability classification of IV and a timber site rating of 72.

G. WATER: Proposed well

H. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, south, and west is Forestry/Forestry. The designation of the Rainbow Park and Winema Peninsula Subdivisions to the east is Rural/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-e, and offered testimony were considered in this Order.

6.1 Goal Findings: 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 to the east and the only legitimate forestry use nearby is to the northwest, across the Hwy 97 corridor. This proposed residence would be adjacent to several other dwellings in the Subdivision and, with the proposed fuelbreaks and the readily available fire protection, there is an insignificant risk of fire.

6.2 Land Development Code Findings: 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 wildlife or fisheries habitat nor watershed protection or recreation values.

FINDING: The subject property has a Timber Site Class Rating of 72, 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 forestry use and presently has no significant second growth. There is no property adjacent to the site which is presently in forestry use. The property across Hwy 97 and to the northwest 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 5-10 minutes. Access to the property to fight fire is excellent, being only a few hundred feet from Hwy 97. Further, the applicant has agreed to required fuelbreaks around the house to prevent the spread of fire to the north, south, and east and the Hwy 97 right-of-way provides a significant fuelbreak to the west where the only legitimate forestry resource is located.

44.003 C: "That the location, size, design and operating characteristics of the proposed development will be compatible with and will not have sig-

nificant 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 the Rainbow Park Subdivision access road which is a graded, gravelled, user-maintained all weather access road. The road provides access for the proposal and the subdivision and is not utilized by commercial timber operators or for other forestry uses. As previously stated, the only legitimate forestry use near the property is located 200 feet across the Hwy 97 right-of-way.

FINDING: The proposal is only one mile 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: Large lot rural-residential use predominates to the east as the Rainbow Park and Winema Peninsula Subdivisions. Forest uses predominate to the northwest across Hwy 97, a natural boundary between forest and rural land use types. The predominant forest uses in the area west of the highway are found to be watershed protection, wildlife habitat, and recreation use by hunters. The location of a nonforest home on the remnant parcel east of Hwy 97 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, east and directly to the west 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 large-lot residential. The closest forestry use lands are to the northwest across the Hwy 97 right-of-way. 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 decades ago as a result of State Highway alignment. The placement of a residence on the property will not destabilize the existing land use pattern of the area as residential use similar to that proposed has been established in the immediate vicinity.

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, 32.0 acres, too small to be considered for commercial forest uses. The site is found to be poorly located for forest management activities as it is located between a developed subdivision and a heavily travelled highway. Forest practices may conflict with the residential and transportation 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 Hearings Officer finds the commercial Forestry land base of the County will not be compromised by the permitting of a nonforest home on 32.0 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 Chiloquin/Agency Lake 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 Copeland St., a graded, gravelled, user-maintained all-weather road.

7. ORDER:

Therefore, it is ordered the request of David Miller for approval of C.U.P. 9-90 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.

DATED this 24th day of April, 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 25th day
of April A.D., 19 90 at 3:57 o'clock PM., and duly recorded in Vol. M90,
of Deeds on Page 7723.

FEE none

Evelyn Biehn County Clerk

By Pauline Muelendore

Return: Commissioners Journal