

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 2-90 FOR
MARY BETH CHESNUT 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 25.0 acres m/l in the Sun Mountain area.

The request was heard by the Hearings Officer on March 23, 1990 and April 20, 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 and a neighbor 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 25 acre m/l parcel located five miles west of Hwy 97 at Milepost 236. two miles north of the intersection with the Greensprings Hwy.. The parcel is described as a portion of the SE 1/4 section 5, Township 33 south, Range 7, east W. M.. T. A. 3307-5-500.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by forest road 100, a graded road providing access to timber operations in the area.

B. FIRE PROTECTION: The property is not within a structural fire protection district. Wildland fire protection is provided by the Dept. of For-

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estry maintaining a station at Fort Klamath. This 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 25 acres of undeveloped land. The site was logged in 1988 and in 1970. The adjacent lands are found devoted to forestry uses as described within the Dept. of Forestry letter dated 2-12-90. Within half a mile are two dwellings, one full-time and one part-time.

D. SEWERAGE: The applicant has selected a septic installation location in the northeast corner of the clearing. Site specific site evaluation has not been accomplished.

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 "LaPine/Steiger 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, but by and large the soils are good for tree production.

G. WATER: Partially completed well exists.

H. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, south, east and west is Forestry/Forestry.

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-g, 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 occurred on properties directly adjacent to the property as evidenced by the Dept. of Forestry letter dated 2-12-90, which is attached hereto and incorporated herein.

The property is not within a structural fire protection district. Wildland protection is greatly complicated by the development as proposed.

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 in forestry use and the site presents a forest resource as set out in Goal 4.

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 not in forest production.

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 not within an established fire protection district and the response time for wildland fire protection is 18 to 20 minutes. The applicant has proposed fuelbreaks around the house to prevent the spread of fire to the adjacent properties, but the potential exists for increased human related fires and for wildland fire to spread to the

unprotected structure.

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: As the property is surrounded by commercial and public forest lands, the Hearings Officer finds the establishment of non-forest residence to be in conflict with the surrounding ownership/use. The access road is utilized by commercial timber operators and the use residential will conflict with the established commercial use of these access roads. The increased fire potential will also interfere with nearby forested parcels.

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 not compatible with forest uses;

FINDING: Forest uses predominate in all compass directions. The location of a nonforest home on the existing parcel is found to conflict with forest uses as set out in the Dept. of Forestry letter dated 2-12-90 (attached) and the findings above.

2. The proposal does interfere seriously with the accepted forestry

practices on adjacent lands devoted to forestry use, and may significantly increase the cost of forestry operations on such lands;

FINDING: The adjacent lands are found devoted to forestry uses as set out in state and local goals. The Hearings Officer finds the predominant land use to be "Forestry".

3. The project may materially alter the stability of the overall land use of the area;

FINDING: The subject parcel was legally created prior to local ordinance regarding partitioning. The placement of a residence on the property may destabilize the existing land use pattern of the area as asserted by Dept. of Forestry.

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, 25.0 acres, too small to be considered for commercial forest uses by itself. However, the site is ideally suited for inclusion in commercial operations as it is located amongst parcels already devoted to resource use as shown on Exhibit "f". Forest practices may conflict with residential uses.

5. The proposal does minimize site productivity, does not minimize the loss of productive forest lands; and is not limited to the area suitable and appropriate to the needs of the proposed use;

FINDING: The proposed residence would be constructed on productive forest land, thus reducing the forest land base. This is found to conflict with L.D.C. section 51.020 E

6. The proposal does not meet the standards set forth relating to the availability of fire protection.

FINDING: Structural fire protection is not provided to this property.

7. ORDER:

Therefore, it is ordered the request of Mary Beth Chesnut for approval of C.U.P. 2-90 is denied.

DATED this 7th day of May, 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 8th day
of May A.D., 19 90 at 10:12 o'clock AM., and duly recorded in Vol. M90,
of Deeds on Page 8666.

Evelyn Biehn, County Clerk

By Quilene Mullendore

FEE none

Return: Commissioners Journal