28907

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 15-91 FOR TRULOVE TO LOCATE A RESIDENCE NOT IN CONJUNCTION WITH FOREST USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a single family residences not in conjunction with forest use on 22.73 acres m/l west of Squaw Flat Rd..

The request was heard by the Hearings Officer April 19, 1991 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Article 55.2

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neil D. Smith. 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 located west of the Squaw Flat Rd. betwen Sprague River and Yonna Valley and one mile south of the Sprague River Hwy.. The parcel is described as a portion of the SE 1/4 section 15, Township 36 south, Range 10E, east W. M.. T. A. 3610-15-2700.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by Squaw Flat Rd., a county maintained paved road connecting Hwy 140 and the Sprague River Hwy..

B. FIRE PROTECTION: The property is within a structural fire protection district, KCFD #3. In addition, the applicant has 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 22.73 acres of undeveloped land. The site has never been logged or otherwise used for commercial resource purposes. Within 1/4 mile there are three homes used for rural-residential use. To the west is farming/grazing use. The unused lands to the east are devoted to forestry uses, i. e. watershed, wildlife habitat and recreation use by occasional hunters.

D. SEWERAGE: The applicant indicates a septic system is on the property in conjunction with the historic use as a homesite.

E. SLOPE: Available topographic mapping and site inspection indicates slopes of 0-15% predominate the site.

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

G. WATER: Existing well

H. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, south, and is Forestry Range. To the west is an acknowledged "exception area" zoned R-5.

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 Article 55.2.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-d, and offered testi mony 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 Comprehen sive 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 resource management has not occurred on any properties directly adjacent to the property. The proposed residence is within a structural fire protection district and with the provision of required fuelbreaks, the readily available wildland fire protection provided by the Dept. of Forestry and access provided by Squaw Flat Rd. there is an insignificant risk of fire and risk to the adjacent uses.

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 44.030-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.

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

FINDING: Article 55.2 identifies residential-single family or mobile home as a nonforest conditional use.

44.030 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 devoted to resource use and the site itself presents no resource for fisheries habitat nor watershed protection or recreation values.

FINDING: The subject property is not rated for timber productivity and the site chosen for the homesite is clearly not in forest production. The only trees on the property are small pines.

FINDING: The small site is not large enough for legitimate commercial forestry use and presently has no significant forest growth. There is no property adjacent to the site which is presently in a pure forestry use. No nearby property is being managed as a forestry resource, and 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. Access to the property to fight fire is excellent, being on a all-weather maintained and paved 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 access road which is a paved county maintained all weather road. The road provides access for the proposal and links the communities of Yonna Valley and Sprague River.

FINDING: The proposal is only 1 mile from the nearest community, Sprague River, 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 additional residential uses within the district will slightly increase the tax base.

B. Klamath County Land Development Code Section 55.2 - 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 and farm use predominates in all compass directions.

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 and south are found not devoted to permitted uses as set out in state and local goals/zoning regulations. The location of a non-resource home will not conflict with management practices on those lands to the east and west. 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 legally created prior to local ordinance regarding partitioning and was an historic homesite. The relocation 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.

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, 22.73 acres, too small to be considered for commercial forest uses. The site is found to be poorly located for forest management activities as it has a very poor soil rating (not rated for timber production) which would result in minimal value for grazing and/or field crop production.

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 is found to be minimal considering the size and aspect of the parcel. No loss of productive resource lands will result. The Hearings Officer finds the commercial Forestry land base of the County will not be compromised by the permitting of nonforest home on 22.73 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. Accordingly, the owner shall adhere to the requirements outlined in Section 55.260 of the Code, SETBACKS FOR FIRE SAFETY AND OTHER STANDARDS. Other rural services will be minimally impacted by the addition of another residence. Access exists from the existing road, a paved county maintained all-weather road.

7. ORDER:

Therefore, it is ordered the request of Rex L. Trulove for approval of C.U.P. 15-91 is approved subject to the following conditions:

1. The applicants 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 1st day of ~~April~~ May, 1991

Neil D. Smith, 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 Article 33 of the Code, together with the required fee within SEVEN 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 seventh day or next business day if the seventh 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 2nd day of May A.D., 19 91 at 10:21 o'clock A M., and duly recorded in Vol. M91, of Deeds on Page 8170.

Evelyn Biehn County Clerk

By Darlene Mullendore

FEE none

Return: Commissioners Journal