

KLAMATH COUNTY, OREGON

IN THE MATTER OF APPEAL OF ISSUANCE OF
BUILDING PERMIT FOR A NON-FOREST DWELLING
UNDER ENFORCEMENT ORDER 89-EO-491

ORDER

1. NATURE OF THE HEARING:

An appeal of the decision to approve a building permit following the applicants submission of findings of fact which addressed the criteria set forth in the LCDC enforcement order 89-EO-491 issued on Tract 1214 was heard on November 19, 1991, pursuant to Klamath County Land Development Code Article 22, Administrative Review Procedure, Section 22.040C and Article 33, Appeal of Decisions.

2. NAMES OF THOSE WHO PARTICIPATED:

All Klamath County Board of Commissioners were present. The appellant, the Department of Land Conservation Development (DLCD) was represented by Mr. Mel Lucas, field representative. The applicant, Mr. John Schoonover was present and was represented by Mr. G. Philip Arnold, legal counsel. The Klamath County Planning Department was in attendance and represented by Mark Richards. Klamath County Counsel, Mr. Rod Davis, was present. The recording secretary was Karen Burg.

3. LEGAL DESCRIPTION:

The subject property is identified as R-2509-00500-01000-000, a five acre parcel located in Tract 1214, northern Klamath County. The approved Tract contains sixteen, 5-acre parcels zoned Forestry. The property is located north of Highway 58 and is transected by the Little Deschutes River.

4. RELEVANT FACTS:

The property is within the Forestry plan designation and has a zone designation of Forestry. The property is 5.0 acres in size and one of sixteen [16] lots in Tract 1214. Conditional Use Permit #39-88-09 was approved on Novem-

ber 30, 1988, thereby allowing the construction of a non-forest residence on the subject parcel. On February 27, 1989, the LCDC signed enforcement order 89-EO-491 requiring that the applicant(s) for any building permit(s) address six (6) points as set forth in criteria outlined in section III, ORDER.

5. EXHIBITS:

The following exhibits were in the application and appeal file:

- A. 1-12 Applicant's statement addressing criteria of Enforcement Order 89-EO-491 - 8/12/91
- B. Notice of Administrative Review - 8/14/91
- C. DLCD comments - 8/26/91
- D. Applicant's request for extension - 8/29/91
- E. Letter dated 8/29/91
- F. Applicant's reply to DLCD comments - 8/29/91
- G. Letter to DLCD chairman - 8/29/91
- H. Second response from DLCD - 9/29/91
- I. Second notice of Administrative Review - 9/13/91
- J. DLCD appeal of land use decision - 10/9/91
- K. Notice of appeal hearing - 10/9/91
- L. Memo to Board of Commissioners - 11/19/91
- M. Enforcement Order 89-EO-491

The following exhibits were submitted by the applicant at the hearing:

Exhibit 1, Findings of Fact, CUP 56-90 Rauch

Exhibit 2, Findings of Fact, CUP 28-90 Troxell

Exhibit 3, Contains the following:

- a. Letter dated 6/2/83 from Edward Lewis, District Ranger
- b. Letter dated 7/18/83 from Orville Grossarth, Forest Supervisor.
- c. Citation from Forest Service manual section 212.8
- d. Unsigned letter from Tri Angle Landowners Association dated 5/11/83 to Regional Forester, USFS.

Exhibit 4, letter from Oregon State Highway Division dated 10/7/71 to Mr. Schoonover.

Exhibit 5, letter from Jim Scott, Resource Assistant, Crescent Ranger Dist., dated 1/14/85.

6. FINDINGS:

Based on the information submitted by the applicant, Mr. John Schoonover, as identified in the above cited exhibits A, 1-12 and F and further substantiated by exhibits 1 through 5, submitted at the hearing held on November 19, 1991, the Klamath County Board of Commissioners reviewed the six points of Criteria as set forth in the DLCD Enforcement Order 89-E0-491 determined the following:

A. That the proposed non-forest use is compatible with forest use. Facts and reasons supporting this determination include:

1. Exhibit "A" Pg. 1, Item 1a (1-7)
2. Exhibit "F" Pg. 1, Item a (compatibility)

B. That the proposed non-forest use does not seriously interfere with the accepted forestry practices on adjacent land devoted to forest use and does not significantly increase the cost of forestry operations on such lands.

1. Exhibit "A" Pg. 2, No. 1
2. Exhibit "A" Appendix Item 1

C. That the proposed non-forest use does not materially alter the stability of the overall land use pattern of the area due to the number of prior established residences in the area.

1. Exhibit "A" Pg. 2, No. 1c1 & 2
2. Exhibit "A" Appendix Item 1
3. Exhibit "A" Appendix Item 10
4. Exhibit "F" Pg. 1, Item (b)
5. Exhibit "F" Pg. 2

D. That the proposed non-forest use is situated on a parcel generally unsuitable for the production of forest products after consideration of environmental and spatial conditions existing on the subject parcel.

1. Exhibit "A" Pg. 1, Item 4
2. Exhibit "A" Pg. 1, Item 5
3. Exhibit "A" Pg. 1, Item 7

E. That the proposed non-forest use as presented is consistent with the provisions of Article 83 of the Klamath County Land Development Code and that the review procedures included applicant supplied information, consistent with Oregon State Department of Fish and Wildlife request at the time of approval of Tract 1214.

1. Exhibit "A" Pg. 3, Paragraph 1E (1-7)
2. Exhibit "A" Appendix 3

F. That the non-forest use is appropriate for and consistent with the requirements in the Forestry zone and will not have an adverse affect on existing facilities and services.

1. Exhibit "A" Pg. 4, Paragraph 1F Items 1-5
2. Exhibit "A" Appendix 5
3. Exhibit "A" Appendix 6

G. That a review by DLCD of the petition included points based on opinion rather than fact and again this is noted in the DLCD letter of 8-26-91, Exhibit C, page 2, paragraphs two and four. Furthermore, it appears that the petition lacks any qualitative standard of review and is subjective rather than objective.

1

1

1

1

✓

1

✓

1

✓

1

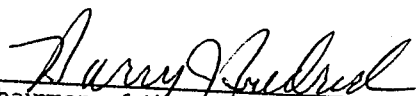
•

26549

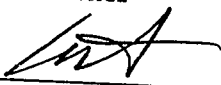
7. ORDER:

In review of the evidence presented and the testimony heard, the Klamath County Board of Commissioners unanimously upholds the decision to issue building permit per LCDC Enforcement Order 89-E0-491 for a single family residence on a parcel of land located in Tract 1214 and furthermore finds the applicant has submitted substantial evidence in the record satisfying the criteria as set forth in the Enforcement Order 89-E0-491.

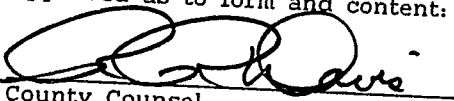
DATED this 19th day of December, 1991


Chairman of the Board


Commissioner


Commissioner

Approved as to form and content:


County Counsel

NOTICE OF APPEAL RIGHTS

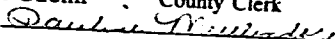
You are hereby notified that this decision may be appealed to the Land Use Board of Appeals within 21 days following the date of the mailing. Contact the Klamath County Planning Department for more information regarding this procedure. Failure to appeal within the time provided will result in the loss of your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 20th day
of Dec. A.D., 19 91 at 10:24 o'clock AM., and duly recorded in Vol. 491
of Deeds on Page 26545

FEE none

Evelyn Biehn County Clerk

By 

Return: Commissioned Journal