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Vol. m92 Page 16569

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 49-92/LP 35-92 FOR HULL TO LOCATE RESIDENCES NOT IN CONJUNCTION WITH FOREST USE AND PARTITION THE PROPERTY

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish three proposed residences not in conjunction with forest use on 16.3 acres west of Old Fort Rd., north of Collman Dairy Rd..

Also considered was the request to partition the property into three parcels of 3.0, 3.0 and 10.6 acres each.

The requests were heard by the Hearings Officer July 24, 1992 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.

3. LEGAL DESCRIPTION:

The subject property is a 16.3 acre property located north of Klamath Falls. The properties proposed for nonforest use are located in the SE 1/4 section 22, T 38S R 9E W.M..

4. RELEVANT FACTS:

A. ACCESS: The property is three miles north of Klamath Falls. Old Fort Rd., a county maintained paved road provides access to the proposal.

B. FIRE PROTECTION: The property is within a structural fire protection district. The Klamath County Fire District maintains a station three miles to the south in Downtown Klamath Falls. The applicant has also agreed to fuel breaks around the residences to reduce the potential of a structural

fire spreading to the lands to the north, south, east and west.

C. LAND USE: The parcels proposed for non forest use are located on the east side of a north-south trending ridge. This land is included within a 16.3 acre holding. Rural residential use has been established on contiguous properties in three compass directions from the applicants property.

D. SEWERAGE: The applicant has not selected septic installation locations. Site specific site evaluation has not been accomplished for this property.

E. SLOPE: Available topographic mapping and site inspection indicates slopes of 0-20% predominate the site.

F. SOILS: Available mapping of the site indicates a land capability classification of VI and a timber site rating of VI.

G. WATER: Proposed wells

H. PLAN/ZONING: The plan/zone designation of the project site and properties to the north, south and west is Forestry Range/Forestry Range. Low Density residential zoning predominates to the east along with the Urban Growth Boundary.

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 and 45.

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 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 forest management has not occurred on properties directly adjacent to the property. Specifically, there is contiguous residential development in three directions. With the mandated fuelbreaks there is a reduced chance of fire spreading through properties protected by the County Fire District.

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 44.030-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: Section 55.230 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, Crown Pacific;
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 immediately surrounding the subject property is not in forestry use and is void of trees. The Hearings Officer finds the proposed

residential uses do not compromise the existing uses in the area.

FINDING: The subject property has a Timber Site Class Rating of VI, thereby meeting the definition of forest land. However, the sites proposed for residential uses are not devoted to forest production.

FINDING: The site is of marginal size for legitimate forestry use and presently has no significant second growth. There is no property adjacent to the site north, south, east and west which is presently in forestry use. The signing of a restrictive covenant will prohibit the permit holder from interfering with accepted resource management practices if they do occur 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 residences are within an established structural fire protection district. Wildland fire protection is provided by the Department of Forestry. Access to the property to fight fire is excellent, being accessed by county maintained paved roads. Further, the applicant has agreed to required fuelbreaks around the house to prevent the spread of fire.

44.030 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 county maintained paved roads. The road provides access for the proposal and to similar properties in the area and is not utilized by commercial timber operators or for other forestry uses.

FINDING: The property is located within the Klamath County School District and will have no impact on the school system.

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: The proposed residences will be located on the west facing slope bounded to the west by agricultural use. The location of non-forest use, as conditioned by this order is found compatible with the surrounding uses.

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

FINDING: The adjacent lands to the north, south, and east are found not devoted to forestry/resource uses as set out in state and local goals. The Hearings Officer finds the predominant land use to be large-lot residential and noncommercial agriculture. The closest resource use lands are to the west. 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 property proposed for non forest use has not been utilized for resource practices for 15+ years due to its aspect, soil conditions and inaccessibility for these practices. The placement of non-forest residences on the property will not destabilize the existing land use pattern of the area as residential uses 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 property, 16.4 acres total, 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 between developed properties to the north, south and west. Forest practices may conflict with the residential/agriculture 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 three nonforest home on 16.4 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 available through the County Fire District.

Impact to other rural services will be minimaliy impacted by the proposed use.

Partitions creating parcels for non forest use are reviewed per the criteria set out in Article 55.2 of the Code

The Hearings Officer finds this partition conforms to these criteria as set out below:

1. The parcels created for non forest use will be 3.0, 3.0 and 10.6 acres each in size. The land is not devoted to Forest uses.

2. Access to the proposed parcels is via county maintained/paved roads. Use of these roads will not interfere with farm practices.

7. ORDER:

Therefore, it is ordered the request of James Hull for approval of CUP 49-92 and LP 35-92 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permi- 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. CUP 49-92 will not be effective until LP 35-92 is filed in the office of the County Clerk.

3. LP 35-92 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing.

4. LP 35-92 will expire in one year from the date below unless recorded or an extension of time is filed with the Planning Department.

5. CUP 49-92 will expire two years after the date of recordation of LP 35-92 unless a request for an extension of time is filed with the Planning Department.

DATED this 24th day of JULY, 24, 1992

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 27th day of July A.D., 19 92 at 3:57 o'clock P.M., and duly recorded in Vol. M92, of Deeds on Page 16569.

Evelyn Biehn - County Clerk

By Darlene Hillendare

FEE none

Return: Commissioners Journal