

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 57-92 FOR
DORTCH TO ESTABLISH A RESIDENCE NOT
IN CONJUNCTION WITH FOREST USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a home as a single family residence not in conjunction with forest use on 80 acres m/l north of Chiloquin. The request was heard by the Hearings Officer AUGUST 21, 1992 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Article 55.

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 located east of Larken Creek, 1 1/2 miles east of Collier State Park, north of Chiloquin. The parcel is described as a portion of section 2, Township 34S, Range 7E W. M.. T. A. 3407-2-300 & 600.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by easement roads from Hwy 97.

B. FIRE PROTECTION: The property is within the Chiloquin/Agency Lake RFD, a structural fire protection district. 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 80 acres of undeveloped land. The site has been used for limited grazing over the last 30 years. There is a non

commercial density of trees on the property. Two parcels to the south were approved for non forest residential use in 1990.

D. SEWERAGE: The applicant indicates three septic system location have been approved.

E. SLOPE: Available topographic mapping and site inspection indicates slopes of 0-10% predominate the site.

F. WATER: On site well.

G. PLAN/ZONING: The plan/zone designation of the project site and properties in all compass directions is 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 Article 55.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-e, 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. Evidence was adduced which showed the County Assessor has deemed this land ineligible for forest tax deferral since it is not suitable for such use because of soil and water conditions. The forest technician was contacted at the Chiloquin Ranger District and his comments were much the same as the Assessors. There was a fire labeled "Chiloquin Burn" approximately 25 years ago and nothing has been established since then even though attempts to plant were made. An examination of the land shows this area is approximately 90% meadow.

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 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 ODF and access provided, 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 55.080 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 to the south of the property is found devoted to rural use. The remainder is in commercial resource use.

FINDING: The subject property is rated Class V 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 with significant beetle kill apparent (see Ex e).

FINDING: The small site is not large enough for legitimate commercial forestry use and presently has no significant forest growth. However, 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 structural fire protection district. Access to the property to fight fire is excellent, being off of an all-weather 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 a user-maintained graded road. The road provides access for this parcel and properties to the north and south.

FINDING: The site is 6 miles from the nearest community, Chiloquin, 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 55.080 - Non Forest Dwellings.

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 commercial resource use dominates in all compass directions.

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

FINDING: The adjacent lands are found devoted to the 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. The permit holder must 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 per local ordinance. The location of a non forest residence on the property will not destabilize the existing land use pattern of the area as use similar to that proposed are 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, 80 acres, too small to be considered for commercial forest uses.

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; The applicant has personally cruised and made a random spot count of trees on this parcel. He found approximately 30 very small lodgepole from 2' to 3 1/2' on about 20 acres to the south end of the parcel. There are some larger trees, about 20 Ponderosa and numerous Lodgepole, some beetle kill to the north and northwest (see exhibits marked 1-4 received at the hearing).

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 80 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 currently provided. And, 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.

This Hearings Officer takes note and includes by reference a letter dated August 3, 1992 from the applicant and the application dated 6-29-92 as facts considered in this matter and makes those documents a part of this order. The Hearings Officer notes the Oregon Department of Land Conservation and Development has chosen to submit a FAX which was dated 8-20-92 at 13:12 P.M. objecting to this Conditional Use Permit. The Hearings Officer considered the objections contained therein but must give weight to those objections which are appropriate. It is further noted this document was submitted approximately 3 1/2 hours prior to the scheduled hearing time. Such practices do not give the applicant sufficient time to gather information to refute any item which may need research nor does it give him time to find independent witnesses to present evidence. Although there is not the formal rules of evidence required in hearing these matters there is a basic constitutional due process and fairness requirement that those who oppose an application at least give timely notice there is opposition. It is further found the DLCD did not produce any witnesses who could be confronted or examined by the applicant. It appears the basis for the objection is consultation of soil maps and other secondary information while the applicant has examined the actual site and submitted photographs and oral statements from those who are most familiar with the actual site.

Based on the above and the detailed testimony given at the hearing the greater weight is given to the applicants testimony and exhibits, even though the witness was closely examined regarding the objections of the DLCD.

7. ORDER:

Therefore, it is ordered the request of DORTCH for approval of C.U.P. 57-92 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 dividing the property or 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.
3. The applicant must provide proof of clearance from the Environmental Health Services Division, and Building Dept. within two years following the date of this order, or obtain an extension of time, or this approval will become null and void.

DATED this 25th day of AUGUST, 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.

CUP 57-92 DORTCH

STATE OF OREGON: COUNTY OF KLAMATH: ss

Filed for record at request of Klamath County the 25th day of Aug. A.D., 19 92 at 10:43 o'clock AM., and duly recorded in Vol. M92, of Deeds on Page 19272.

FEE none

By Evelyn Biehn County Clerk

Return: Commissioners Journal