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BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONVol. m93 Page 18697

IN THE MATTER OF CUP 39-93/LP 31-93
FOR BREITENSTEIN TO LOCATE RESIDENCES NOT
IN CONJUNCTION WITH FOREST USE AND
PARTITION THE PROPERTY

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish an existing home and build a new home as non forest homes. In addition the applicant has submitted a preliminary map depicting the division of the parent 80 acre parcel into 15 and 65 acre parcels.

The requests were heard by the Hearings Officer JULY 23, 1993 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 Michael L. Brant. 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 Burq. No oral testimony in opposition was offered this application.

3. LOCATION:

The subject property is an 80 acre property located 3/4 mile west of Orindale Dr., 1/4 mile south of Hwy 140. It is located in the NE 1/4 SE 1/4 & SE 1/4 NE 1/4 Sec. 2 T 39S R 8E.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed via easements west from Orindale Dr. This is a paved/maintained County road providing access to the property/partition.

B. FIRE PROTECTION: The property is within a structural fire protection district (KCFD #4). 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 division/non forest use presently used for low intensity "hobby" grazing. The land use to the west includes a inventoried mineral extraction sit. To the north, 400', is the City Limit of Klamath Falls. Contiguous to the east is the UGB line.

D. SEWERAGE: The applicant has not had the property evaluated for subsurface sewage disposal. There is no reason to believe approval will not be obtained.

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

F. SOILS: Available mapping of the site indicates a land capability classification 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/Forestry Range. Zoning 1/4 mile to the east is RS, reflecting a recognized "exception" area within the Klamath Falls UGB.

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 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 not occurred on properties directly adjacent to the property. Staff photos indicate the property is vegetated to native brush/grass species. As the property is in a structural fire protection district and with provision of the required fuelbreaks there is a reduced chance of fire spreading through adjacent properties.

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 continuously in large blocks, i. e. Forest Service, BLM, Weverhaeuser, 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 west of the subject property are designated for mineral extraction. Properties to the north and east are set out for

residential uses. The Hearings Officer finds the change in use for one additional dwelling will not compromise the existing uses in the area.

FINDING: The subject property is not rated for timber production. The sites proposed for residential uses are not devoted to forest production at this time and are physically divided from land devoted to forest uses by Hwy 140 and 1/2 mile of intervening rural residential use.

FINDING: The sites are of marginal size for legitimate forestry use and presently have no forest growth. 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 existing residence is 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 paved maintained road. Further, the applicant has agreed to required fuelbreaks around the houses 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 maintained easement roads.

The road provides access for the proposal and to similar properties in the area.

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 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 and east are found NOT devoted to resource uses as set out in state and local goals. It is the stated intent of the applicant to retain the existing residence and construct a new home. These uses are found not to conflict with management practices on those lands. In any event, 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 properties proposed for non forest use have not been utilized for commercial resource practices due to its aspect, soil conditions and size. The reclassification of these vacant properties to "non-forest" will not destabilize the existing land use pattern of the area.

4. The proposed non forest homesite 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 proposed homes will be on properties, 15 and 65 acres each, too small to be considered for commercial forest uses. The sites are found to be poorly located for forest management activities.

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 reclassification to non forest uses.

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. Impact to other rural services will be minimally 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 15 and 65 acres in size.

2. Access to the proposed parcels is via county maintained paved road.

Use of these roads will not interfere with resource practices.

18704

7. ORDER:

Therefore, it is ordered the request of BRIETENSTEIN for approval of CUP 39-93 and LP 31-93 is approved subject to the following conditions:

1. The applicant 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. CUP 39-93 will not be effective until LP 31-93 is filed in the office of the County Clerk.
3. LP 31-93 must comply with Code requirements. Oregon Revised Statutes and agency conditions prior to filing.
4. LP 31-93 will expire one year from the date set out below unless the map is filed with the County Clerk or an extension of time is requested/approved by the Planning Director.

DATED this 23rd day of JULY, 1993

Michael L. Brant
MICHAEL L. BRANT, 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 29th day
of July A.D., 19 93 at 3:16 o'clock P.M., and duly recorded in Vol. M93
of Deeds on Page 18697.

FEE none

Return: Commissioners Journal

Evelyn Biehn
By Pauline M. Henderson County Clerk

CUP 39-93/LP 31-93 BREITENSTEIN