

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 57-93 FOR
JACOBUS TO ESTABLISH A RESIDENCE NOT
IN CONJUNCTION WITH FOREST USEORDER1. NATURE OF THE REQUEST:

The applicant wishes to establish a home as a single family residence not in conjunction with forest use on 4.01 acres m/l north and west of Chiloquin. The request was heard by the Hearings Officer OCTOBER 8, 1993 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 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 Burg.

3. LEGAL DESCRIPTION:

The subject property is located north of the North Chiloquin Rd., 1/4 mile west of Hwy 97, 1/2 mile from Chiloquin. The parcel is described as a portion of the NW 1/4, SE 1/4 Section 28, Township 34S, Range 7E W.M.. T.A. 3407-28D-2100.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by the North Chiloquin Rd. west 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 4 acres of undeveloped land. The site has been used for recreation over the last 15 years. There is a non commercial density of trees on the property. Ninety percent of the property is sagebrush and a few aspens comprise the remainder of the vegetation.

D. SEWERAGE: The applicant indicates a septic system and well are in place.

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. A rural exception area, Winema Peninsula, is 1/4 mile to the east.

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-d, 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 current tree density and size. An examination of the land shows this area is approximately 90% sagebrush.

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 sets out procedures/eligibility/criteria for non-forest dwellings:

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 adjacent to the property is found devoted to rural use, with rural residences established on adjacent properties.

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 applicant reports only sparse pine trees on the property.

FINDING: The small site is not large enough for legitimate commercial forestry use and presently has no significant forest growth. 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 county maintained paved road. The road provides access for this parcel and properties to the east

and west.

FINDING: The site is 1/2 mile 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:

A. 2.. The applicant shall provide documentation showing the proposed use will not interfere with forestry uses in the area.

FINDING: Rural-residential use dominates in all compass directions.

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.

B. 1. The parcel upon which the dwelling is proposed to be located was lawfully created prior to February 5, 1990.

FINDING: The subject parcel was legally created per local ordinance prior to date set out.

B. 2. The parcel upon which the dwelling is proposed to be located is composed primarily of soils (Maset coarse sandy loam) which are: b. technically capable of greater than 50 cu. feet/acre/year.

FINDING: The Hearings Officer finds that although the soil capability technically meets the definition, the evidence presented in the applicants testimony and application convinces the Hearing Officer that local conditions prevent the production of greater than 50 cu. feet/acre/year. However, as the soils are suited to production of greater than 50 cu. feet/acre/year, the criteria set out in L.D.C. sec. 55.080 B. 2. (b) must be applied.

FINDING: Sixty + parcels exist within a 160 acre square when centered on the center of the subject parcel.

B. 3. The parcel upon which the proposed dwelling is to be located is within a rural fire district.

FINDING: The proposed home will be within the protection of the Chiloquin/Agency Lake RFD.

C. 1. The dwelling will not force a significant change in, will not significantly increase the costs of, or will not impede farm or forest practices on nearby farm or forest land.

FINDING: The location of a non forest residence on the property will not destabilize or impede the existing land use pattern of the area as use similar to that proposed are established in the immediate vicinity.

C. 2. A written statement is recorded which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act.

FINDING: 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 adjacent or nearby lands.

C. 3. The entire parcel upon which the dwelling is to be located has been disqualified from receiving farm or forest tax deferral.

FINDING: The applicant has presented testimony indicating the Klamath County

Tax Assessor has not considered this property for tax deferral due to the lack of merchantable timber which would qualify the property for tax deferral status.

C. 4. If road access to the dwelling is by a road owned and maintained by a private party or by a governmental agency, then the applicant shall provide proof of a long term road access use permit or agreement.

FINDING: The applicant is required, as a condition of approval, to demonstrate legal access to the satisfaction of the County Surveyor.

C. 5. All other applicable requirements of the Code are met.

FINDING: The applicant shall be required to demonstrate siting in conformance with the standards of Article 69, RURAL/WILDLAND FIRE SAFETY STANDARDS.

FINDING: 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 indicates there are few trees on the 4 acre parcel.

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 4 acres.

FINDING: 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.

7. ORDER:

Therefore, it is ordered the request of JACOBUS for approval of C.U.P. 57-93 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.
3. The applicant must demonstrate legal access to the satisfaction of the County Surveyor prior to the issuance of a development permit.
4. 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 8th day of OCTOBER, 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 11th day
of Oct. A.D., 19 93 at 1:07 o'clock P. M., and duly recorded in Vol. M93
of Deeds on Page 26416

Evelyn Biehn - County Clerk

By Pauline Mullins

FEE none

Return: Commissioners journal