BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 38-94 FOR EDWARD ASHBY TO LOCATE A RESIDENCE ON PROPERTY ZONED FORESTRY/RANGE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a home as a single family residence on 20 acres 1/2 mile south of the Sprague River Hwy, 1/2 mile east of Sprague River. The request was heard by the Hearings Officer MAY 13, 1994 pursuant to PROPOSED ORDINANCE 44.39 which is being considered in response to HB 3661, effective November 4, 1993. The request was reviewed for conformance with proposed 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 Burg, Administrative Secretary.

3. LOCATION:

The subject property is located south and east of Sprague River, within 1/2 mile of the town center. The parcel is described as portions of the NW 1/4 NW 1/4 Sec. 23, T 36S R 10E. T.A. 3610-23-100.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed via road easement south from the Sprague River Hwy.

B. FIRE PROTECTION: The property is within the area covered by the SRVFD. The applicant has proposed fuel breaks around the residence to reduce the potential of a structural fire spreading.

C. LAND USE: The property is 5 +/- acres of undeveloped land. Within the template (Sec. 55.090 E) are THREE homes established as of January 1, 1993 on more than SEVEN lots (Sec. 55.090 C 2). One half miles to the west is the town of Sprague River, an incorporated town offering a variety of services including stores, post office, and cafe.

D. SEWERAGE: The applicant indicates a septic evaluation has NOT been accomplished.

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

F. SOILS: The Soil Conservation Service mapping of the site indicates the property is located on the BLY soil series.

This soil series and its properties are set out in the publication SOIL SURVEY OF KLAMATH COUNTY, OREGON on file in the Planning Department.

G. WATER: Proposed well

H. PLAN/ZONING: The plan/zone designation of the project site and properties adjacent is Forestry/Range.

5. RELEVANT CRITERIA:

The standards and criteria relevant to this application are found in the Klamath County Comprehensive Plan (Goal 4) and proposed amendments to the Klamath County Land Development Code, Ord 44.39 pertaining to Article 55.2

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 set out in Sections 55.050 and General Review Criteria set out in Section 55.060.

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 resource management HAS NOT occurred on the subject property and properties in the area. The proposed residence is within a structural fire protection district, and, with the provision of required fuelbreaks, and structural fire protection provided

by the SR VFD, and the readily available wildland fire protection provided by the Dept. of Forestry 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. 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 is found not devoted to commercial resource use.

FINDING: The subject property is site indexed 67 for timber productivity and the site chosen for the homesite is no longer in forest production. The only trees on the property are small pines, juniper, mahogany and bitterbrush.

FINDING: The small site is not large enough for legitimate commercial forestry use and presently has no significant forest growth. There is no property adjacent to the site which is presently in a pure forestry use. And with 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.

B. As the property is not under farm deferral status Proposed Klamath County Land Development Code Article 55.2 refers the application to Article 55 for review criteria:

The uses conditionally permitted shall be subject to review in accordance with the following criteria as set out in proposed section 55.050:

1. The location, size, design and operating characteristics of the proposed use will not force a significant change in, or significantly increase the cost of, accepted resource uses on nearby resource lands;

FINDING: Rural-residential and noncommercial resource 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 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.

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 has been established in the immediate vicinity.

FINDING: 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, 20 acres m/l, too small to be considered for commercial forest uses. The site is found to be poorly located for forest management activities as it has a soil rating which would result in minimal value for resource use (VI).

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 a home on 20 acres.

2. The proposed use will not significantly increase fire hazards or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

FINDING: Structural fire protection is provided by the Sprague River RFD. The owner shall adhere to the requirements outlined in Article 69, Rural/Wildland Fire Safety Standards. Other rural services will be minimally impacted by the addition of another residence. Access exists from the existing road.

3. The proposed use is in conformance with all standards and criteria of Article 57 of the Land Development Code.

FINDING: Article 57 is found not applicable as the property under review is not within a GOAL 5 overlay.

4. A written statement will be recorded with the deed which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act, ORS 30.090 and uses allowed by this Code.

FINDING: A document setting out agreement with the above shall be filed with the County Clerk as a condition of this approval.

C. Also required is consideration of the review criteria and conditions set out in proposed Section 55.060 A-H.

a. The tract on which the proposed dwelling will be sited does not contain a dwelling and no other dwelling has been approved for the tract.

FINDING: No other dwelling exists or is approved for the property under review.

b. Approval of the dwelling will not exceed the facilities and service capabilities of the area. The proposed dwelling site:

1. shall obtain approval for on-site sewage disposal.

FINDING: The normal permitting procedure for a residence requires approval/permit from the Environmental Health Services Division prior to Building Permit clearance.

2. will be adequately served by road access.

FINDING: The existing roadnet is a well developed/maintained road accessing the property under review.

3. shall be developed pursuant to Article 69, Rural/Wildland Fire Safety Standards.

FINDING: A condition of approval requiring compliance is set out as a condition of approval.

4. must be served by an approved water system other than from a Class II stream.

FINDING: The applicant proposes an on site well which must be approved by the Watermaster.

c. Approval of the dwelling will not materially alter the stability of the overall land use pattern of the area.

FINDING: The adjacent lands are found devoted to the permitted uses as set out in state and local goal/zoning regulations. The location of another home will not conflict with management practices on nearby resource properties. The permit holder is required to record a restrictive covenant which will protect resource management activities from interference.

d & e. Approval of the dwelling, in conformance with all required standards and criteria, will not create conditions or circumstances the County determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

FINDING: The Hearing Officer finds that adherence to the various Code requirements discussed in this Order will result in a land use not conflicting with the purposes/intent of the acknowledged plan/regulations.

f. Conformance with National Wetlands Inventory Maps/Policy

FINDING: The Hearings Officer finds the property under review is not within a designated wetlands area.

g. The lot or parcel upon which the dwelling will be placed was legally created.

FINDING: The Hearings Officer finds the information submitted with the application demonstrates the property under review is a legal parcel per the definition set out in Article 11 of the Code.

h. Siting Requirements; 1-3

FINDING: The Hearings Officer finds a site plan, prepared per Article 41, and reviewed by the Planning Director, will satisfy the criteria.

D. As this is considered a "160 acre template dwelling" application the criteria set out in proposed section 55.090 E are reviewed:

FINDING: The Hearings Officer, upon review of the submitted documentation finds conformance with the required criteria in that three legal dwellings existing as of January 1, 1993 exist on seven lots within or touching a 160 acre square centered on the subject property.

7. ORDER:

Therefore, it is ordered the request of EDWARD ASHBY for approval of CUP 38-94 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 as set out in Article 69.

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 13th day of MAY, 1994

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 16th day of May A.D., 19 94 at 3:20 o'clock P M., and duly recorded in Vol. M94, of Deeds on Page 15399.

Evelyn Biehn County Clerk

FEE none By Deanne Millenstone

Return: Commissioners Journal

05-16-94P03:20 RCVD

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