

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for a
Conditional Use Permit by

GENE KASPER and CLARA KASPER

Applicants.

CUP 100-97

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a home on approximately 40 acres zoned Forestry/Range. This request was heard by the Hearings Officer February 6, 1998 pursuant to Ordinance 44.39. 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 Neal G. Buchanan. The applicants did not appear. The Planning Department was represented by Kim Lundahl, and the recording secretary was Karen Burg.

3. LOCATION:

The subject property is located approximately one mile south of Highway 140 East, approximately 1.5 miles east of Beatty, Klamath County, Oregon. It is described as a portion of NW4 SE4 Section 24 Township 36 S Range 12 EWM.

4. RELEVANT FACTS:

A. ACCESS: According to the applicant's application, the property is accessed by Medicine Mountain Road. Documentation supportive of there being legal access was provided, but was inconclusive.

B. FIRE PROTECTION: The property may be within an area covered by Sprague River Volunteer Fire Department. The applicants provided documents supportive of such available fire protection, on letterhead of that Department. However, a preferable document would include agreement signed on behalf of the said Department.

C. LAND USE: The property is approximately 40 acres of undeveloped land.

D. SEWERAGE: The applicants propose to use a septic system for sewage disposal.

E. SOILS: The property is located on soils which are unclassified.

F. WATER: Proposed well

G. PLAN/ZONING: The plan/zone designation of the project site and property 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 amendments to the Klamath County Land Development Code, Ord. 44.39 pertaining to Article 55.

6. FINDINGS:

All evidence submitted as the Staff Report and Exhibits B - D 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 55.060 and 55.080.

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 manmade structures and forest resources."

FINDING: The Hearings Officer finds that active resource management HAS NOT occurred on the subject property. No fire district has indicated concern about placement of the dwelling. However, by the same token, no fire district has YET indicated willingness to supply structure protection for a fire on the property should the applicant annex to the district or contract with the district for services.

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 site is not devoted to commercial resource use.

FINDING: The subject property is site indexed by the applicants poor for timber productivity. The site chosen for the homesite is not in forest production.

FINDING: The small site is not large enough for legitimate forestry use. The signing of a restrictive covenant will prohibit the permit holder from interfering with accepted resource management practices on nearby lands.

Goal 4, Policy Number 4 states: "The County shall regulate development of non-forest uses in forested areas."

Rationale: To protect the health, safety and welfare of county citizens and to reduce the fire danger to manmade structures and forest resources.

FINDING: The proposed residence may be within an established structural fire protection district, but the applicants proof of such protection is ambiguous. Access to the property to fight fire is acceptable, if legal access is available.

The threat of fire spreading to resource properties is found to be mitigated.

B. As the property is not under forest land or farm deferral status, the Klamath County Land Development Code 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 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 farm or forestry practices on nearby agricultural or forest lands;

FINDING: Rural-residential and noncommercial resource use are present in all compass directions.

FINDING: The adjacent lands are found to be devoted to single family dwellings located upon large lots.

FINDING: The location of a 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, vegetation, location and size of the tract.

FINDING: The site is found to be poorly located for forest management activity. No loss of productive resource land 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 this 40 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 to be provided as a condition of approval. 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, but as a condition of approval, such access must be shown to be legally recognized.

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 within a Goal 5 overlay (medium - low density deer winter range), but is a "lot of record" as defined by ODFW.

4. A written covenant will be recorded which recognizes the rights of adjacent and nearby land owners to conduct farm and forest operations consistent with accepted farming practices and the Forest Practices Act.

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 a condition of the review criteria and conditions set out in Section 55.060 A-H.

a. The lot or parcel on 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.

b. The tract on which the proposed dwelling will be sited does not contain a dwelling.

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

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

1. shall obtain approval for connection to an on-site sewage disposal system.

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: Access to the property is allegedly provided by Medicine Mountain Road. As a condition of approval, legal access to the parcel must be shown.

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.

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

FINDING: The adjacent lands are found devoted to large lot rural residential dwellings. The location of another home will not conflict with this use, nor with management practices on any resource properties which may be located in the area. The permit holder is required to record a restrictive covenant which will protect resource management activities from interference.

g. The dwelling and accessory structures are to be sited on the parcel such that the building site selected will have the least impact on nearby or adjoining forest or farm lands, insure that adverse impacts on forest operations and accepted farming practices near the tract will be minimized, and minimize the amount of forest lands used to site roads, service corridors, dwellings and structure, and minimize risk associated with wildfire.

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

h. Approval Condition:

1. wetlands inventory maps

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

2. farm and forest operations

FINDING: The documents setting out the applicant's recognition of adjacent and nearby land owners to conduct forest operations is made a condition of this approval.

3. The owner of the property shall plant a sufficient number of trees on the tract so that the tract may reasonably be expected to meet State Department of Forestry stocking requirements.

FINDING: The Hearings Officer finds that this property is excluded from farm or forest deferral programs, and that thus the stocking requirement need not be met.

D. As this is considered a "Lot Of Record" application, the criteria set out in Section 55.070 are reviewed:

FINDING: The Hearings Officer, upon review of the submitted documentation finds conformance with the required criteria excepting that the applicants would appear to be relying for access upon an existing road which may be a USFS road. 55.070 (B) (5) indicates that a "United States Forest Service Road . . . shall not qualify." As a condition of approval, the applicants must show with more specificity the existence of legal access.

7. ORDER:

Therefore, it is ordered that the request of GENE KASPER and CLARA KASPER for approval of CUP 100-97 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 applicants shall comply with the fire safety and other siting standards of the Land Use Code as set out in Article 69.

3. The applicants must provide proof of recorded documentation reflecting legal access to the parcel.

4. The applicants must provide proof that structural fire protection will be provided by a fire protection district or agency.

5. The applicants must provide proof of clearance from the Environmental Health Services Division and Building Department.

6. The applicants must meet all of the foregoing conditions 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 20th day of February, 1998.


NEAL G. BUCHANAN
Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this Order may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a notice of appeal as set out in Article 33 of the Klamath County Land Development Code, together with the fee required within seven (7) days of the mailing date of this Order. 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 Hearings Officer the 23rd day
of February A.D., 19 98 at 1:39 o'clock P. M., and duly recorded in Vol. M98
of Deeds on Page 5788

Return: Commissioners Journal

FEE

No Fee

By Bernetha G. Letsch, County Clerk