

800

m 15709
Vol. 75 Page

BOARD OF COUNTY COMMISSIONERS

In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE)
 APPLICATION FOR A COMPRE-)
 HENSIVE LAND USE PLAN CHANGE)
 ASSOCIATED WITH ZONE CHANGE) O R D E R
 NO. 75-10 BY ROBERT M. PERLA)
 FOR MARGUERITE EGAN)

This matter having come on for hearing upon the application of Robert M. Perla for Marguerite Egan for an amendment to the Comprehensive Land Use Plan associated with Zone Change No. 75-10 for a change from the Agriculture designation to the Urban Density Residential designation on the Comprehensive Land Use Plan map, a public hearing having been heard by the Klamath County Planning Commission on August 26, 1975, where from the testimony, reports and information produced at the hearing by the applicant, the Planning Department staff and other persons in attendance, the Planning Commission recommended approval of the application. Following action by the Planning Commission, a public hearing before the Board of County Commissioners was regularly held on October 14, 1975, where from the testimony, reports and information produced at the hearing that the application for a change in Comprehensive Land Use Plan designation for that certain property described as Government Lots 3, 4, 5, 6, 11, 12, 13 and 14, Section 18, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, should not be granted.

The Board of County Commissioners makes the following findings of fact as required by Ordinance No. 17, the same being the Klamath County Zoning Ordinance, and Fasano v. Board of Commissioners, Washington County, 96 Adv Sh 1059, 264 OR 547, 507 P2d 23 (1973):

1. The subject property is approximately 86.64 acres in size.
2. The subject property has approximately one-half mile of frontage on Agency Lake.

75 DEC 18 AM 9 36

3. The subject property has a Comprehensive Land Use Plan designation of Agriculture.

4. The subject property is presently zoned AF (Agriculture Forestry), a zone compatible with the Comprehensive Land Use Plan designation of Agriculture.

5. The acquisition of the subject property was not recommended by John Gunter, District Engineer, Oregon State Highway Division or Lyle Smith, Public Works Director, Klamath County.

6. Mr. Gunter and Mr. Smith did not recommend that the subject property be redesignated upon the Comprehensive Land Use Plan or be rezoned.

7. The proposed change requested by the applicant would result in an additional high density recreation-residential area, zoned RD 10,000, in addition to Tract 1113, Oregon Shores Unit 2, owned by Mr. Perla, being drained into Agency Lake.

8. The record discloses no testimony regarding the amount of congestion and pressure on public access roads caused by partial or complete development of the subject property, especially in conjunction with the unknown congestion and pressure generated by the presently undeveloped Tract 1113, Oregon Shores Unit 2.

9. The testimony of Curtis Tecmire does not disclose any reasonable facts or figures which would indicate the subject property does in fact have climate and rainfall characteristics different from other agriculture land in the immediate vicinity.

10. Potential irrigation water is available to the subject property from surface water in Agency Lake or subsurface water from individual wells.

11. Tract 1113, Oregon Shores Unit 2, immediately adjacent to the subject property is presently designated on the Comprehensive Land Use Plan map as Recreation-Residential and is zoned RD 10,000 but is not developed.

12. The proposed development, as stated by Mr. Perla, would include the entire frontage of Agency Lake on the subject property to be divided into separate lots, most of which would be privately owned.

13. The development of a common area for property owners in the subject property would not and could not prevent their potential use of Henzel Park, a county owned park south of the subject property.

14. There is no testimony as to the potential pressures the change would have upon public facilities, including the recreation facilities in Henzel Park, and schools in the area.

15. There is no testimony as to the effects the change in Land Use Plan designation and zone designation of the subject property would have upon adjacent properties, other than for Tract 1113, Oregon Shores Unit 2.

16. The request for a Land Use Plan change and zone change of the subject property is based upon three primary considerations:

A. To provide for what the applicant considers to be better drainage of Tract 1113, located adjacent to the subject property.

B. To provide for what the applicant considers to be better traffic access and circulation for Tract 1113.

C. To take full economic advantage of the proposed community water system planned for Tract 1113.

17. The record discloses no testimony concerning the effects of the change in Land Use Plan designation or zone may have upon the quality of water in Agency Lake or upon subsurface waters particularly:

A. The potential pollution due to drainage of subject property and Tract 1113.

B. The potential pollution due to use of individual septic systems under urban density conditions.

18. The only testimony offered by Mr. Perla as to the reasons for requesting the RD 10,000 zone instead of a less dense zone such

as RD 40,000 was that the number of lots created under a less dense use zone would make a community water system hookup to Tract 1113 economically unfeasible.

19. The record indicates no testimony as to the proposed change in Land Use Plan designation and zone is necessary for the adequate development of traffic patterns for Tract 1113.

20. The record reveals no testimony that the proposed change in Comprehensive Land Use Plan designation and zone is necessary to provide for adequate drainage from Tract 1113.

21. The record discloses no testimony as to the aesthetic effects of the proposed CLUP designation change and zone change upon the surrounding area and the public in general.

22. The subject property presently has a volunteer crop of hay growing upon it, an agricultural use.

23. The Fasano decision requires that the applicant for a change prove:

- A. There is a public need for the change.
- B. The public need is met best by the proposed change.
- C. The change conforms to the general welfare standards in enabling legislation.

24. The Fasano decision requires that each of these elements be supported by substantial evidence.

25. The Fasano decision requires that the more drastic the change and the greater the potential impact on the area in which the change is sought, the more justification must be shown.

26. The Fasano decision requires that all change actions should be in furtherance of the general welfare standards set forth in ORS 215.055.

27. The Fasano decision requires that the hearing body examine all facts of a particular situation and decide if there is a public need.

28. Public need in this particular situation can be based upon ORS 215.055, which states: "The plan and all legislation authorized by ORS 215.010 to 215.233 shall be designed to promote the public health, safety and general welfare and shall be based on the following considerations, among others: the various characteristics of the various areas in the county, the suitability of the area for particular land uses and improvements, the land uses and improvements in the areas, trends in land improvement, density of development, property values, the needs of economic enterprises in the future development of the area, needed access to particular sites in the areas, natural resources of the county and prospective needs for development thereof, and the public need for healthful, safe, aesthetic surroundings and conditions."

29. Public need in this particular situation can only be based upon Statewide Goals and Guidelines, particularly Goal 3--To Preserve and Maintain Agricultural Lands.

30. The Fasano decision requires that the public need will be served best by changing the classification of a particular property in question as compared with other property, including:

A. Those seeking the change must show that there is no other property available, or

B. if there is other property available, the proponents of the change must prove that the use of their property as opposed to other property would best serve the public need.

C. Those seeking the change must show why it is necessary to introduce it into an area not previously contemplated and why the property owners there should bear the burden of departure.

31. The record discloses no testimony as to the public need for the change.

32. The record discloses no testimony as to the public need being met best by the proposed change.

33. The record discloses no testimony as to the general welfare standards in enabling legislation.

34. Substantial evidence for each of the elements listed was not provided in the record.

35. The change from a Comprehensive Land Use Plan designation of Agriculture to Urban Density Residential is a drastic change, with a great potential impact on the area; the testimony as to the justification was not "substantial."

36. The record indicates no testimony relative to the general welfare standards in 215.055, including public health, safety and general welfare:

- A. Various characteristics.
- B. Trends in land development.
- C. Density of development.
- D. Natural resources of the county and prospective needs for development thereof.
- E. Public need for healthful, safe, aesthetic surroundings and conditions.

37. The record reveals no testimony relative to the State-wide Goals and Guidelines, particularly the Agricultural Goal.

38. The record indicates no testimony that the public need will best be served by changing the Land Use Plan classification or zone of the subject property as compared with other property.

39. The record indicates no testimony that there is no other property available or that if there is other property available, that the subject property would best serve the public need.

40. The record indicates no testimony as to why it is necessary to introduce the proposed Comprehensive Land Use Plan into an area not previously contemplated and why the property owners there should bear the burden of departure.

Based upon the above findings of fact, the following conclusions of law are made:

1. The proposed change in the Comprehensive Land Use Plan designation is a drastic change, from Agriculture to Urban Density Residential.

2. The subject property to be affected by the proposed change in Land Use Plan designation, in conjunction with those uses generally allowed with such a change, is not totally and satisfactorily related to other properties in the area.

3. The subject property, with the proposed Land Use Plan change is not completely related to streets and highways in a proper, adequate manner to serve the type of traffic generated by such uses.

4. The proposed change in Land Use Plan designation will have an adverse effect and not a limited adverse effect on properties and permitted uses thereof in the affected area, including Henzel Park, Agency Lake and other property in the area.

5. The proposed Comprehensive Land Use Plan change is not in keeping with land uses and improvements, trends in land development, density of land development and prospective needs for development throughout the entire affected area, including trends along surface water bodies.

6. The proposed Land Use Plan designation change does not represent the highest, best and most appropriate use of the land affected.

7. The proposed Land Use Plan change is not necessary for adequate drainage and traffic patterns for Tract 1113, Oregon Shores Unit 2.

8. There is no prospective public need for the Land Use Plan designation change.

9. The public need is not met best by the proposed Land Use Plan designation change.

10. Public need was not illustrated in accordance with the general welfare standard of ORS 215.055, including:

- A. various characteristics of the county;
- B. trends in land development;
- C. density of development;
- D. natural resources of the county and prospective needs for development thereof; and
- E. public need for health, safe, aesthetic surroundings and conditions.

11. Substantial evidence for each one of the elements listed in 8-9-10 was not provided.

12. No great amount of justification for the proposed Comprehensive Land Use Plan change was shown.

13. Public need is not illustrated, in accordance with the Statewide Goals and Guidelines, particularly the Agricultural Goal.

14. Public need is not shown in relation to being best served by changing the Comprehensive Land Use Plan designation of the subject property as compared to other property, including:

- A. There is other urban density designated land available.
- B. The subject property will not best serve the public.
- C. It is not necessary to introduce the Urban Density Residential classification into the affected area.
- D. Property owners should not bear the departure.

NOW, THEREFORE, IT IS HEREBY ORDERED that the application of Robert M. Perla for Marguerite Egan for a change of the Comprehensive Land Use Plan associated with Zone Change No. 75-10, requesting a

ORDER: CLUP ASSOCIATED WITH
ZONE CHANGE 75-10
ROBERT M. PERLA
Page 9 of 9

15807

a change from Agriculture designation to Urban Density Residential designation on that real property described as Government Lots 3,4, 5,6,11,12,13,and 14, Section 18, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, is hereby denied.

DONE AND DATED THIS 12th day of December 1975.

Lloyd Giff.

Chairman of the Board

Raymond R. Thorne
County Commissioner

APPROVED AS TO FORM

W. J. Stapleton
County Legal Counsel

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:

KLAMATH COUNTY BOARD OF COMMISSIONERS
on this 16th day of DECEMBER A. D., 1975
at 9:36 o'clock A. M. and du.
recorded in Vol. M 75 of DEEDS
Page 15799

WM. D. MILNE, County Clerk

By Hazel L. Hazel
Fee NONE Deputy.