

designation of Agriculture.

4. The subject property is presently zoned AF (Agriculture Forestry), a zone which is compatible with the 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 map 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 agricultural 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 and zone designations 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 or zone designations 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 use zone such as RD 40,000 was that the number of lots created under a less dense use 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 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 the 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 development and 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 also 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 the 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 an Agricultural Forestry zone to RD 10,000 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 designation 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 zone 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 zone is a drastic change, from Agricultural Forestry to RD 10,000.

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

3. The subject property, with the proposed zone 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 zone 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 zone 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 zone change does not represent the highest, best and most appropriate use of the land affected.

7. The proposed zone 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 zone change.

9. The public need is not met best by the proposed zone 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 healthful, 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 zone 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 zone 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 need.
- C. It is not necessary to introduce the RD 10,000 zone 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 zone, Application No. 75-10, requesting a change from AF (Agricultural Forestry)

ORDER: ZONE CHANGE 75-10
ROBERT M. PERLA
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to RD 10,000 (Residential Single Family), 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 Gilt
Chairman of the Board

Thomas R. Thome
County Commissioner

APPROVED AS TO FORM

Walter 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., 19 75

at 9:36 o'clock A M. and duly

recorded in Vol. N 75 of DEEDS

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WM. D. MILNE, County Clerk

By Hazell Wagle
Fee None Deputy.