vol. 77 raga 131 0

31514

BOARD OF COUNTY COMMISSIONERS

In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE APPLICATION FOR ZONE CHANGE NO. 75-10 BY ROBERT M. PERLA

10

11

13

15

16

17

18

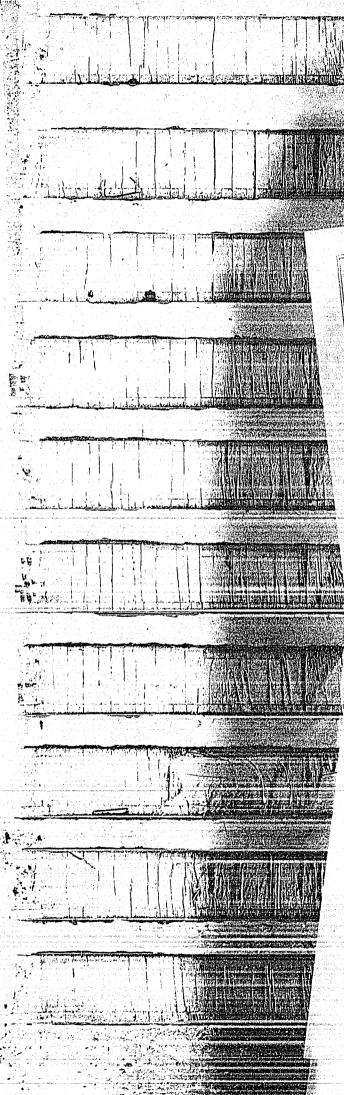
19

26

ORDER

THIS MATTER having come for hearing upon the application of Robert M. Perla, said change application being numbered Zone Change 75-10, for a change in zone from AF (Agricultural Forestry) zone to RD 10,000 (Residential Single Family) and SP-11 (Marina) on that portion of land to be utilized for a marina, a public hearing having been heard by the Klamath County Planning Commission on January 25, 1977 and continued to February 22, 1977, for a Decision Only, 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 March 11, 1977, where from the testimony, reports and information produced at the hearing that the application for a change of zone 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, that application for a zone change for Robert Perla be ordered for a new hearing on April 20, 1977, in order to hear additional testimony from the citizens of Chiloquin, Oregon.

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
- 2. The subject property has approximately one-half mile of frontage on Agency Lake.
- 3. The subject property is presently zoned AF (Agricultural Forestry), a zone which allows agricultural uses of which the land has been utilized in the past and not that of residential uses as proposed by the applicant.
- 4. 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.
- 5. 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 unknown congestion and pressure generated by the presently undeveloped Tract 1113, Oregon Shores Unit 2.
- 6. Potential irrigation water is available to the subject property from surface water in Agency Lake or subsurface water from individual wells.
- 7. 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 completely developed.
- 8. 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.

ZONE CHANGE 75-10

size.

10

13

14

15

16 17

18

19

20

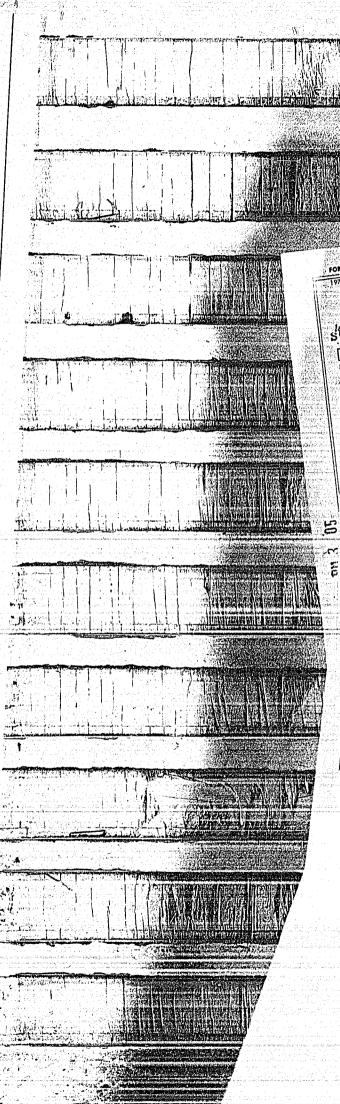
21

22

23

24

25 26



9. 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.

10. 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.

11. 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.

12. The record indicates no testimony as to the proposed zone change is necessary for adequate development of traffic patterns for Tract 1113.

13. The record reveals no testimony that the proposed zone change is necessary to provide for adequate drainage from Tract 1113.

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

15. The <u>Fasano</u> 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

ZONE CHANGE 75-10

11

12

13

14

15

16

17

18

19

21

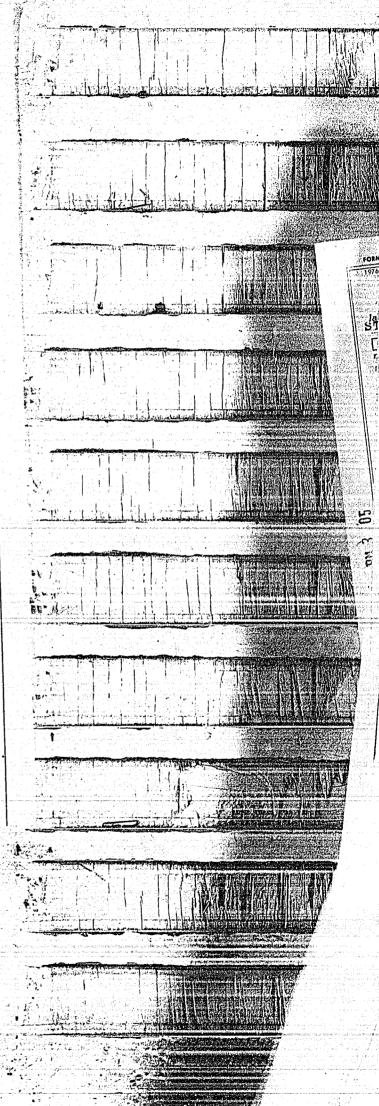
22

25 26

27

28

- 3-

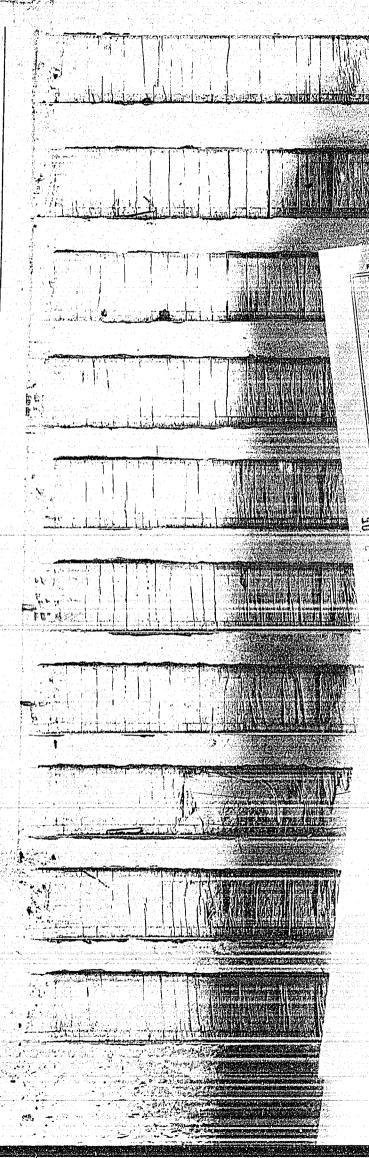


C. The change conforms to the general welfare standards in enabling legislation.

- 16. The <u>Fasano</u> decision requires that each of these elements be supported by <u>substantial evidence</u>.
- 17. The <u>Fasano</u> 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.
- 18. The $\underline{\text{Fasano}}$ decision requires that all change actions should be in furtherance of the general welfare standards set forth in ORS 215.055.
- 19. The <u>Fasano</u> decision requires that the hearing body examine the facts of a particular situation and decide if there is a public need.
- 20. 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 area, 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."
- 21. Public need in this particular situation can also be based upon Statewide Goals and Guidelines, particularly Goal 3 --

ZONE CHANGE 75-10

-4-



To Preserve and Maintain Agricultural Lands.

22. The \underline{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.

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

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

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

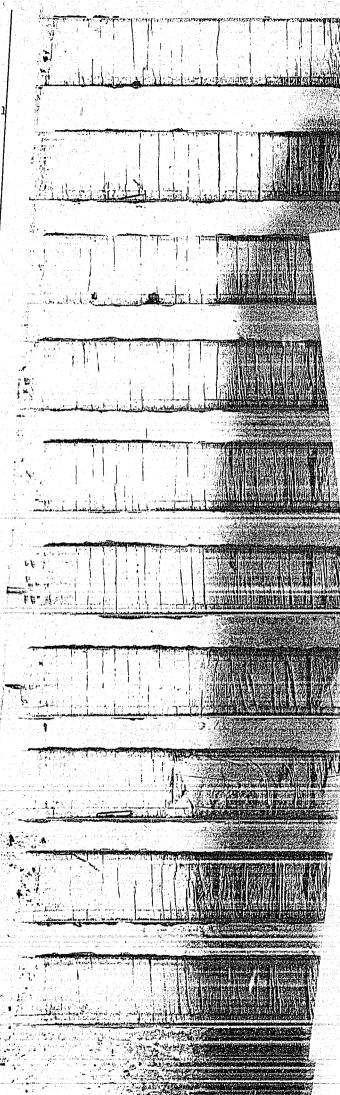
26. The change from Agricultural Forestry zone to RD 10,000 and SP-11 is a drastic change with a great potential impact on the area; the testimony as to the justification was not "sub-

27. 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.

ZONE CHANGE 75-10



10

11

13

14

16

17

18

19

20

21

22 23 24

25

26 27

28

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.
- 28. The record reveals no testimony relative to the Statewide Goals and Guidelines, particularly the Agricultural Goal.
- 29. 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.
- 30. The record indicates no testimony that the public need will be best served by the change in zone of the subject property as compared with other property.
- 31. Testimony indicated by Mr. Steven Pfeiffer from the Planning Department, that there were other subdivisions in the area within a 15 mile radius, that there were other lots available from these subdivisions which were also not completely developed as far as improvements from a building standpoint.
- 32. 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 owenrs 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 and SP-11.
- The subject property, with the proposed zone change, is not completely related to streets and highways in a proper,

ZONE CHANGE 75-10

11

14

15

16

17

18

19

20 21

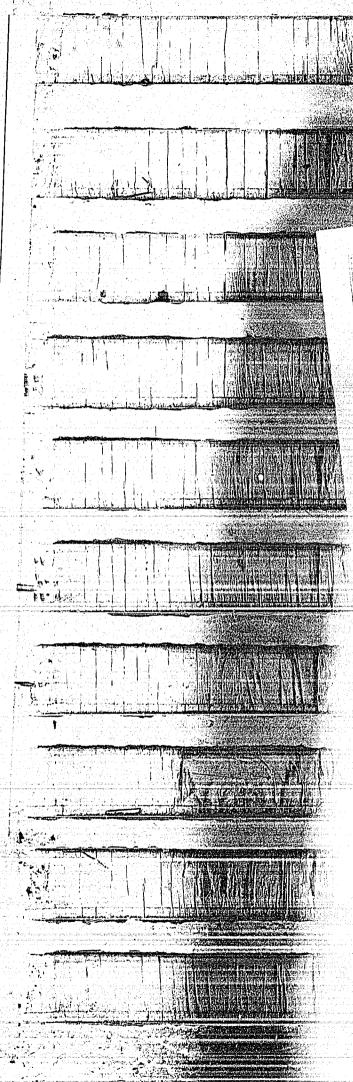
22

23

24 25

26 27

-6-



adequate manner to serve the type of traffic generated by such uses.

- 3. 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.
- 4. 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.
- 5. The proposed zone change is not necessary for adequate drainage and traffic patterns for Tract 1113, Oregon Shores Unit 2.
- 6. The proposed zone change does not represent the highest, best and most appropriate use of the land affected.
- 7. There is no prospective public need for the zone change.
 - 8. The public need is not met by the proposed zone change
- 9. 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.
- 10. No great amount of justification for the proposed zone change was shown.

ZONE CHANGE 75-10

10

11 12

13

14

15

16

17

18

19

20

21

22

23

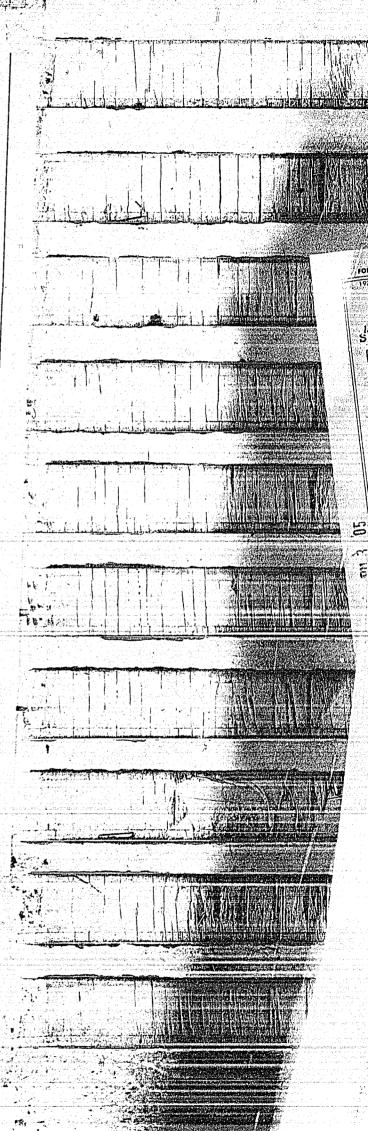
25

26

27

28

-7-



11. Public need is not illustrated, in accordance with the Statewide Goals and Guidelines, particularly the Agricultural Goal. 12. 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 and SP-11 zones into the area.

D. Property owners should not bear the departure.

NOW, THEREFORE, IT IS HEREBY ORDERED that the application of Robert M. Perla for a change of zone, Application No. 75-10, requesting a change from AF (Agricultural Forestry) to RD 10,000 (Residential Single Family) and SP-11 (Marina) on that portion of land to be utilized for a marina on 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 230 day of UMQ, 1977. Giff, Chairman of the Board

28

ZONE CHANGE 75-10

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within	instrument was i	received and filed	for record on	the 21th day of
JuneA.D., 1977at_	9;56o'clo	ckA_M., and	duly recorded	in Vol. M77
	_on Page1110			

FEE NONE

12 13

14

15

16

17

19

21

23

24 25 26

WM. D. MILNE, County Clerk