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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 )

O R D E R

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,

111.1

1 Washington County, 96 Adv Sh 1059, 264 OR 547, 507 P2d 23 (1973):  
2  
3 1. The subject property is approximately 86.64 acres in  
4 size.

5 2. The subject property has approximately one-half mile  
6 of frontage on Agency Lake.

7 3. The subject property is presently zoned AF (Agricultural Forestry), a zone which allows agricultural uses of which the  
8 land has been utilized in the past and not that of residential uses  
9 as proposed by the applicant.

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

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

19 6. Potential irrigation water is available to the subject  
20 property from surface water in Agency Lake or subsurface water from  
21 individual wells.

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

26 8. The proposed development, as stated by Mr. Perla,  
27 would include the entire frontage of Agency Lake on the subject pro-  
28 perty to be divided into separate lots, most of which would be  
privately owned.

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1 9. There is no testimony as to the potential pressures  
2 the change would have upon public facilities, including the recrea-  
3 tion facilities in Menzel Park, and schools in the area.

4 10. There is no testimony as to the effects the change in  
5 land use and zone designations of the subject property would have  
6 upon adjacent properties, other than for Tract 1113, Oregon Shores  
7 Unit 2.

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

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

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

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

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

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

25 15. The Fasano decision requires that the applicant for a  
26 change prove:

27 A. There is a public need for the change.

28 B. The public need is met best by the proposed change.

1 C. The change conforms to the general welfare stand-  
2 ards in enabling legislation.

3 16. The Fasano decision requires that each of these  
4 elements be supported by substantial evidence.

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

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

11 19. The Fasano decision requires that the hearing body  
12 examine the facts of a particular situation and decide if there is  
13 a public need.

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

27 21. Public need in this particular situation can also be  
28 based upon Statewide Goals and Guidelines, particularly Goal 3 --



1 To Preserve and Maintain Agricultural Lands. 1311

2 22. The Fasano decision requires that the public need will  
3 be served best by changing the classification of a particular pro-  
4 perty in question as compared with other property, including:

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

7 B. if there is other property available, the pro-  
8 ponents of the change must prove that the use of their property as  
9 opposed to the other property would best serve the public need.

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

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

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

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

20 26. The change from Agricultural Forestry zone to RD  
21 10,000 and SP-11 is a drastic change with a great potential impact  
22 on the area; the testimony as to the justification was not "sub-  
23 stantial."

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

27 A. Various characteristics.

28 B. Trends in land development.

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1 C. Density of Development

2 D. Natural resources of the county and prospective  
3 needs for development thereof.

4 E. Public need for healthful, safe, aesthetic sur-  
5 roundings and conditions.

6 28. The record reveals no testimony relative to the  
7 Statewide Goals and Guidelines, particularly the Agricultural Goal.

8 29. The record indicates no testimony that there is no  
9 other property available or that if there is other property available  
10 that the subject property would best serve the public need.

11 30. The record indicates no testimony that the public  
12 need will be best served by the change in zone of the subject  
13 property as compared with other property.

14 31. Testimony indicated by Mr. Steven Pfeiffer from the  
15 Planning Department, that there were other subdivisions in the area  
16 within a 15 mile radius, that there were other lots available from  
17 these subdivisions which were also not completely developed as far  
18 as improvements from a building standpoint.

19 32. The record indicates no testimony as to why it is  
20 necessary to introduce the proposed zone into an area not previously  
21 contemplated and why the property owners there should bear the  
22 burden of departure.

23 Based upon the above findings of fact, the following con-  
24 clusions of law are made:

25 1. The proposed change in zone is a drastic change, from  
26 Agricultural Forestry to RD 10,000 and SP-11.

27 2. The subject property, with the proposed zone change,  
28 is not completely related to streets and highways in a proper,



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

2 3. The proposed change in zone will have an adverse  
3 effect and not a limited adverse effect on properties and permitted  
4 uses thereof in the affected area, including Henzel Park, Agency  
5 Lake and other property in the area.

6 4. The proposed zone change is not in keeping with land  
7 uses and improvements, trends in land development, density of land  
8 development and prospective needs for development throughout the  
9 entire affected area, including trends along surface water bodies.

10 5. The proposed zone change is not necessary for  
11 adequate drainage and traffic patterns for Tract 1113, Oregon Shores  
12 Unit 2.

13 6. The proposed zone change does not represent the high-  
14 est, best and most appropriate use of the land affected.

15 7. There is no prospective public need for the zone  
16 change.

17 8. The public need is not met by the proposed zone change.

18 9. Public need was not illustrated in accordance with the  
19 general welfare standard of ORS 215.055 including:

- 20 A. various characteristics of the county;  
21 B. trends in land development;  
22 C. density of development;  
23 D. natural resources of the county and prospective  
24 needs for development thereof; and  
25 E. public need for healthful, safe, aesthetic  
26 surroundings and conditions.

27 10. No great amount of justification for the proposed  
28 zone change was shown.

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 23rd day of June, 1977.

Lloyd Giff  
Lloyd Giff, Chairman of the Board

Nell Maenen, County Commissioner  
Raymond P. Thorne  
Raymond Thorne, County Commissioner

APPROVED AS TO FORM:  
Boivin, Boivin & Aspell  
County Legal Counsel

By Wanda Brown

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STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 24th day of June A.D., 19 77 at 2:56 o'clock A M., and duly recorded in Vol. M77 of DEEDS on Page 11100.

FEE NONE

WM. D. MILNE, County Clerk

By Kazil Drazil Deputy