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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 A COMPRE- )  
HENSIVE LAND USE PLAN CHANGE )  
ASSOCIATED WITH ZONE CHANGE )  
NO. 75-10 BY ROBERT M. PERLA )

O R D E R

THIS MATTER having come on for hearing upon the application of Robert M. Perla for an amendment to the Comprehensive Land Use Plan associated with Zone Change No. 75-10 for a change to the Urban Density Residential and Public designation on that portion of the property to be utilized as a marina on the Comprehensive Land Use Plan map, 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, the Planning Commission, where from the testimony, reports and information produced at the hearing by the applicant, the Planning Department Staff and other persons in attendance, 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 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, that application be ordered for a new hearing before the Board of Commissioners for April 20, 1977, in order to hear additional testimony from the citizens of Chiloquin, Oregon.

The Board of County Commissioners makes the following

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1 findings of fact as required by Ordinance No. 17, the same being the  
2 Klamath County Zoning Ordinance, and Fasano v. Board of Commission-  
3 ers, Washington County, 96 Adv Sh 1059, 264 OR 547, 507 P2d 23  
4 (1973):

5 1. The subject property is approximately 86.64 acres in  
6 size.

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

9 3. The subject property as, in the past, been utilized  
10 as agricultural land and not that of residential use as proposed  
11 by the applicant.

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

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

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

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

28 8. The proposed development, as stated by Mr. Perla,

1 would include the entire frontage of Agency Lake on the subject  
2 property to be divided into separate lots, most of which would be  
3 privately owned.

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

7 10. There is no testimony as to the effects the change in  
8 Land Use Plan designation and zone designation of the subject  
9 property would have upon adjacent properties, other than for Tract  
10 1113, Oregon Shores Unit 2.

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

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

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

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

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

25 14. The record discloses no testimony as to the aesthetic  
26 effects of the proposed Comprehensive Land Use Plan designation  
27 change and zone change upon the surrounding area and the public in  
28 general.

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

3 16. The Fasano decision requires that the applicant for a  
4 change prove:

- 5 A. There is a public need for the change.  
6 B. The public need is met best by the proposed change.  
7 C. The change conforms to the general welfare stand-  
8 ards in enabling legislation.

9 17. The Fasano decision requires that each of these  
10 elements be supported by substantial evidence.

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

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

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

20 21. Public need in this particular situation can be based  
21 upon ORS 215.055, which states: "The plan and all legislation  
22 authorized by ORS 215.010 to 215.233 shall be designed to promote  
23 the public health, safety and general welfare and shall be based on  
24 the following considerations, among others: The various character-  
25 istics of the various areas in the county, the suitability of the  
26 area for particular land uses and improvements, the land uses and  
27 improvements in the areas, trends in land development, density of  
28 development, property values, the needs of economic enterprises in

1 the future development of the area, needed access to particular sites  
2 in the areas, natural resources of the county and prospective needs  
3 for development thereof, and the public need for healthful, safe,  
4 aesthetic surroundings and conditions."

5 22. Public need in this particular situation can only be  
6 based upon statewide Goals and Guidelines, particularly Goal 3 --  
7 To Preserve and Maintain Agricultural Lands.

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

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

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

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

20 24. Testimony indicated by Mr. Steven Pfeiffer from the  
21 Planning Department that there were other subdivisions in the area  
22 within a 15 mile radius, that there were other lots available from  
23 these subdivisions which were also not completely developed as far  
24 as improvements from a building standpoint.

25 25. The record discloses no testimony as to the public  
26 need for this change.

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

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1 27. Substantial evidence for each of the elements listed  
2 was not provided in the record.

3 28. The change on the Comprehensive Land Use Plan desig-  
4 nation to Urban Density Residential and Public on that portion to  
5 be utilized as a marina, is a drastic change, with a great potential  
6 impact on the area; the testimony as to the justification was not  
7 "substantial."

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

11 A. Various characteristics.

12 B. Trends in land development

13 C. Natural resources of the county and prospective  
14 needs for development thereof.

15 D. Public need for healthful, safe, aesthetic  
16 surroundings and conditions.

17 30. The record reveals no testimony relative to the  
18 Statewide Goals and Guidelines, particularly the Agricultural Goal.

19 31. The record indicates no testimony that the public  
20 need will best be served by changing the Land Use Plan classifica-  
21 tion or zone of the subject property as compared with other property.

22 32. The record indicates no testimony that there is no  
23 other property available or that if there is other property avail-  
24 able, that the subject property would best serve the public need.

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

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

3 1. The proposed change in the Comprehensive Land Use  
4 Plan designation is a drastic change to Urban Density Residential  
5 as well as Public on that portion to be utilized as a marina.

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

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

13 4. The proposed Comprehensive Land Use Plan change is not  
14 in keeping with land uses and improvements, trends in land develop-  
15 ment, density of land development and prospective needs for  
16 development throughout the entire affected area, including trends  
17 along surface water bodies.

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

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

24 7. There is no prospective public need for the Land Use  
25 Plan designation change.

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

28 9. Public need was not illustrated in accordance with the

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1 general welfare standard of ORS 215.055, including:

- 2 A. various characteristics of the county'
- 3 B. trends in land development;
- 4 C. density of development;
- 5 D. natural resources of the county and prospective
- 6 needs for development thereof; and
- 7 E. public need for health, safety, aesthetic
- 8 surroundings and conditions.

9 10. No great amount of justification for the proposed

10 Comprehensive Land Use Plan change was shown.

11 11. Public need is not illustrated, in accordance with

12 the Statewide Goals and Guidelines, particularly the Agricultural

13 Goal.

14 12. Public need is not shown in relation to being best

15 served by changing the Comprehensive Land Use Plan designation

16 of the subject property as compared to other property including:

17 A. There is other urban density designated land

18 available.

19 B. The subject property will not best serve the

20 public.

21 C. It is not necessary to introduce the Urban

22 Density Residential classification into the affected area.

23 D. Property owners should not bear the departure.

24 NOW, THEREFORE, IT IS HEREBY ORDERED that the application

25 of Robert M. Perla for a change of the Comprehensive Land Use

26 Plan associated with Zone Change 75-10, requesting a change to

27 Urban Density Residential and Public on that portion to be utilized

28 as a marina on real property described as Government Lots 3, 4, 5,

CLUP 75-10

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1 6, 11, 12, 13 and 14, Section 18, Township 35, South, Range 7, East  
2 of the Willamette Meridian, Klamath County, Oregon is hereby denied.

3 DONE AND DATED THIS 23rd day of JUNE, 1977.

4  
5 *Lloyd Gift*

6 Lloyd Gift, Chairman of the Board

7  
8 Neil Kuoner, County Commissioner

9 *Raymond P. Thorne*  
10 Raymond Thorne, County Commissioner

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

14 By *Robert Boivin*

15 STATE OF OREGON; COUNTY OF KLAMATH; ss.

16 Filed for record at request of KLAMATH COUNTY BOARD OF COMMISSIONERS

17 this 24th day of JUNE A. D. 1977 at 1:56 o'clock A.M. and

18 duly recorded in Vol. 477, of DEEDS on Page 11108

19 Wm D. MILLS, County Clerk

20 NO FEE

21 *Hazel Brazil*