

## BEFORE THE BOARD OF COUNTY COMMISSIONERS

In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE APPLICATION)  
FOR CLUP CHANGE ASSOCIATED WITH )  
Z.C. 77-16, John A. Kalita, Jr. )

O R D E R

77-16-33 112 13

This matter having come on for hearing upon the application of John A. Kalita, Jr. for an amendment to the Comprehensive Land Use Plan map accompanying Zone Change 77-16, for a change from Agricultural to Residential Recreation. Public hearings were heard by the Klamath County Planning Commission on July 19, 1977, August 9, 1977 and August 23, 1977. The August 23rd. hearing was for decision only and where from the testimony, reports and information produced at the hearings by the applicant, members of the Planning Department staff and other persons in attendance, the Planning Commission recommended to the Board of Commissioners that the Board of Commissioners take Comprehensive Land Use Plan and Zone Change 77-16, for John Kalita, Jr. for final determination based on the fact that the situation is a matter of County Policy which should be set by the Board of Commissioners. Following action by the Planning Commission a public hearing before the Board of County Commissioners was regularly held on October 3, 1977, where from the testimony, it appeared that the record below was accurate and complete and it appeared from the testimony, reports and information produced at the hearing below that the application for a change of Comprehensive Land Use Plan for real property described that portion of the N 1/2 N 1/2 of Section 31, Township 34S, Range 7, lying westerly of High-

1 way 62 and easterly of the Old Dalles-California Highway excepting  
2 that portion within the Cemetery should be granted.

3 The Board of County Commissioners makes the following find-  
4 ings of fact and conclusion of law as required by Ordinance No. 17,  
5 of the Klamath County Zoning Ordinance.

6 FINDINGS OF FACT:

7 1. On July 19, 1977, before the Planning Commission, test-  
8 imony by the Planning staff indicated subject site was located in a  
9 portion of Section 31, Township 34S, Range 7 and generally located  
10 between State Highways 427 and 62 and approximately 1/4 mile north-  
11 east of Agency Lake, Klamath County, Oregon.

12 2. Testimony before the Planning Commission indicated the  
13 subject site as being 36 acres in size, with acreage being spilt up  
14 into 5 lots with the smallest being 4.8 acres in size and the largest  
15 being 10.7 acres in size.

16 3. Testimony by applicant on July 19, 1977, before the  
17 Planning Commission indicated that the 36 acres had been purchased  
18 in July of 1972, at which time there was no Comprehensive Land Use  
19 Plan and no Zoning Ordinances.

20 4. Testimony from applicant indicated that the original  
21 36 acres had been divided in the early part of 1973 and that no  
22 new lots had been created since the original division in 1973.

23 5. Testimony from the applicant indicated to the Board of  
24 Commissioners that the intent of the division of the 36 acres was  
25 not a willful attempt to subvert the Ordinance.

26 6. Testimony from the staff on July 19, 1977, at the  
27 Planning Commission hearing, indicated the vegetation of the site as  
28 being pine trees, with coverage being high to medium density and

1 ground cover being of nature grass and brush and not that of agri-  
2 culture crops such as alfalfa, grain and the like.

3 7. On July 19, 1977, the applicant submitted to the  
4 Planning Commission, information that indicated the soils were not  
5 that exceptional for agriculture purposes and that the cost and  
6 removal of trees on subject parcel would not be economically feasible  
7 and because of these two indicators the (Agriculture) Comprehensive  
8 Land Use Plan appears not to be the appropriate Comprehensive Land  
9 Use Plan.

10 8. Testimony from applicant indicated to the Planning  
11 Commission that there were other parcels in the area that were  
12 Residential Recreation and also that the Comprehensive Land Use map,  
13 Klamath County Exhibit E, indicated the same.

14 9. Planning staff, on July 19, 1977, also indicated that a  
15 Comprehensive Land Use Plan and zone change was definitely needed  
16 because of the size and the intended uses were not compatible with  
17 the existing AF zone.

18 10. On July 19, 1977, at the Planning Commission hearing,  
19 Planning staff indicated to the Planning Commission, that the  
20 statute of limitations had run-out on the subject site and that the  
21 illegalities of the parcelization were being dropped. Statute of  
22 limitations had run-out, by the time the hearing on July 19, 1977,  
23 before the Planning Commission was being heard.

24 11. Testimony from applicant before the Planning Commission  
25 on August 9, 1977, indicated that there was a need for such develop-  
26 ment of land, due to the fact that the parcels had already been  
27 bought and also that applicant had support from other realtors that  
28 5-10 acre parcels are in demand.

1           12. The Board of County Commissioners recommended to the  
2 applicant, being John Kalita, Jr., that a Plat shall be issued and  
3 presented to the Review Committee and then to the Planning Commission  
4 in order to get approval and that this Comprehensive Land Use Plan  
5 and Zone Change will be granted on the provision that an approved  
6 Plat be filed.

7           13. In order to provide policy direction for the guidance  
8 of land use decisions, it is the articulated policy of the Board of  
9 County Commissioners that in reviewing land use decisions:

10           No comprehensive land use plan change, zone change, condition-  
11 al use permit or variance shall be denied solely on the basis that  
12 the use of the property was changed on or after December 7, 1972,  
13 and before December 7, 1973, without complying with Klamath County  
14 Zoning Ordinance, Ordinance No. 17, so long as failure to comply  
15 with the Ordinance does not appear to be a willful attempt to subvert  
16 the Ordinance, and that the decision would otherwise comply with  
17 criteria for approval.

18 CONCLUSIONS OF LAW:

19           1. The property affected by the Comprehensive Land Use  
20 Plan change is adequate in size and shape to facilitate those uses  
21 normally allowed in conjunction with such zoning.

22           2. The property affected by the proposed Comprehensive  
23 Land Use Plan change is properly related to streets and highways  
24 to adequately serve the type of traffic generated by such uses that  
25 may be permitted therein.

26           3. The proposed Comprehensive Land Use Plan change will  
27 have no adverse effect or only limited adverse effect on any property  
28 or the permitted uses thereof within the affected area.

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1 4. That the proposed Comprehensive Land Use Plan change is  
2 in keeping with land uses and improvements, trends in land develop-  
3 ment, density of land development, and prospective needs for develop-  
4 ment in the affected area.

5 5. That the proposed Comprehensive Land Use Plan change is  
6 in keeping with any land use plans duly adopted and does, in effect,  
7 represent the highest, best and most appropriate use of the land  
8 affected.

9 NOW THEREFORE, IT IS HEREBY ORDERED that the application  
10 of John Kalita, Jr., for a change on the Comprehensive Land Use  
11 Plan map, from Agricultural to Residential Recreation and on real  
12 property described as that portion of the N 1/2 N 1/2 of Section 31,  
13 Township 34, Range 7, lying westerly of Highway 62 and easterly of  
14 the Old Dalles-California Highway, excepting that portions within  
15 the Cemetery should be granted after filing an approved Plat of  
16 the proposed site.

17 DONE AND DATED THIS 29th day of November,  
18 1977.

19  
20 Board of County Commissioners

21  
22 By: \_\_\_\_\_

23 Chairman

24 Neil Kuonen  
25 Commissioner

26  
27 Hayd L. Hyman  
28 Commissioner

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1 APPROVED AS TO FORM

2

3 *[Signature]*  
Boivin, Boivin & Aspell  
4 County Legal Counsel

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 30th day of  
November A.D., 19 77 at 2:19 o'clock P M., and duly recorded in Vol M77  
of Deeds on Page 23213.

FEE None

WM. D. MILNE, County Clerk

By *[Signature]* Deputy

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BEFORE THE BOARD OF COUNTY COMMISSIONERS  
In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE )  
APPLICATION FOR CHANGE )  
OF ZONE NO. 77-16, BY )  
John A. Kalita, Jr. )

O R D E R

This matter having come on for hearing upon the application of John A. Kalita, Jr., for a zone change from AF (Agricultural Forestry) to SP-1 (Rural Residential) on real property described as that portion of the N 1/2 N 1/2 of Section 31, Township 34, Range 7 and lying westerly of Highway 62 and easterly of the Old Dalles-California Highway exception that portion within the Cemetery. Public hearings on the application were heard by the Klamath County Planning Commission on July 19, 1977, August 9, 1977 and August 23, 1977. The August 23, 1977, was for decision only and where from the testimony, reports and information produced at the hearings by the applicant, members of the Planning Department staff and other persons in attendance, the Planning Commission recommended to the Board of Commissioners that the Board of Commissioners take Comprehensive Land Use Plan and zone change 77-16, for John Kalita, Jr., for final determination based on the fact that the situation is a matter of County Policy which should be set by the Board of Commissioners. Following action by the Planning Commission, a public hearing before the Board of County Commissioners was regularly held on October 3, 1977, where from the testimony, it appeared that the record below was accurate and complete and it appeared from the testimony, reports and information produced at the hearing below



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1 that the application for a change in zone for real property described  
2 as that portion of the N 1/2 N 1/2, of Section 31, Township 34,  
3 Range 7, lying westerly of Highway 62 and easterly of the Old Dalles-  
4 California Highway, excepting that portion within the Cemetery,  
5 should be granted.

6 The Board of County Commissioners makes the following find-  
7 ings of fact and conclusions of law as required by Ordinance No. 17,  
8 the Klamath County Zoning Ordinance.

9 FINDINGS OF FACT:

10 1. On July 19, 1977, before the Planning Commission, test-  
11 imony by the Planning staff indicated subject site was located in a  
12 portion of Section 31, Township 34, Range 7 and generally located  
13 between State Highways 427 and 62 and approximately 1/4 mile north-  
14 east of Agency Lake, Klamath County, Oregon.

15 2. Testimony before the Planning Commission indicated the  
16 subject site as being 36 acres in size, with acreage being split up  
17 into 5 lots with the smallest being 4.8 acres in size and the largest  
18 being 10.7 acres in size.

19 3. Testimony by applicant on July 19, 1977, before the  
20 Planning Commission indicated that the 36 acres had been purchased  
21 in July of 1972, at which time there was no Comprehensive Land Use  
22 Plan and no Zoning Ordinances.

23 4. On July 19, 1977, the record before the Planning  
24 Commission indicated the soils for this particular area were Class  
25 IV soils and that the lobert loam soils were not exceptionally  
26 good for producing cash crops, unless under high level management.

27 5. On August 9, 1977, before the Planning Commission  
28 it was pointed out that the subject property is located adjacent



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1 to a paved road, which is Highway 427 and can carry the type of  
2 traffic that would be generated by the proposed use.

3 6. Before the Planning Commission on August 9, 1977, the  
4 record below indicated to the Board of Commissioners that the  
5 applicant submitted a septic tank feasibility report from DEQ for  
6 Lot 3 and that the subject lot was adequate for septic tank systems.

7 7. The record below before the Planning Commission on  
8 August 9, 1977, indicated to the Board of Commissioners that there  
9 was a need for this particular site in that, information from several  
10 realtors indicated that there is a continuing demand for such  
11 property and that this type of site, if sold in the market price  
12 range wise, that this site could easily be sold.

13 8. The applicant being John Kalita, Jr., also pointed out  
14 before the Planning Commission on August 9, 1977, that there is a  
15 demand for such property, especially for recreational property that  
16 has trees and some pasture and open space.

17 9. The applicant stated that in support of the subject of  
18 need, that there have also been five parties involved who have pur-  
19 chased these parcels under good faith, to utilize such site for  
20 recreational use and for building sites.

21 10. In support of need for this particular zone change for  
22 John Kalita, Jr., he stated of the five people who have purchased  
23 their parcels, three of the people wish to move on immediately.

24 11. Mr. Kalita, Jr., stated that each of the five owners  
25 who have bought a lot, have separate tax statements for each and  
26 that there was no proposal for further breaking down of the subject  
27 parcels.

28 12. In order to provide policy direction for the guidance

1 of land use decisions, it is the articulated policy of the Board  
2 of County Commissioners that in reviewing land use decisions:

3 No comprehensive land use plan change, zone change, condition-  
4 al use permit or variance shall be denied solely on the basis that  
5 the use of the property was changed on or after December 7, 1972,  
6 and before December 7, 1973, without complying with Klamath County  
7 Zoning Ordinance, Ordinance No. 17, so long as failure to comply  
8 with the Ordinance does not appear to be a willful attempt to  
9 subvert the Ordinance, and that the decision would otherwise comply  
10 with criteria for approval.

11 CONCLUSIONS OF LAW:

12 1. The property affected by the change of zone is adequate  
13 in size and shape to facilitate those uses normally allowed in  
14 conjunction with such zoning.

15 2. The property affected by the proposed change of zone  
16 is properly related to streets and highways to adequately serve  
17 the type of traffic generated by such uses that may be permitted  
18 therein.

19 3. The proposed change of zone will have no adverse effect  
20 or only limited adverse effect on any property or the permitted  
21 uses thereof within the affected area.

22 4. That the proposed change of zone is in keeping with land  
23 uses and improvements, trends in land development, density of land  
24 development, and prospective needs for development in the affected  
25 area.

26 5. That the proposed change of zone is in keeping with any  
27 land use plans duly adopted and does, in effect, represent the  
28 highest, best and most appropriate use of the land affected.

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1 NOW THEREFORE, IT IS HEREBY ORDERED that the application of  
2 John Kalita, Jr., for a change on the Comprehensive Land Use Plan  
3 map, from Agricultural to Residential Recreation and on real  
4 property described as that portion of the N 1/2 N 1/2 of Section 31,  
5 Township 34, Range 7, lying westerly of Highway 62 and easterly  
6 of the Old Dalles-California Highway, excepting that portions with-  
7 in the Cemetery should be granted after filing an approved Plat  
8 of the proposed site.

9 DONE AND DATED THIS 29th day of November  
10 19 77.

11  
12 Board of Commissioners

13  
14 By: Chairman

15 Neil K. Koon  
16 Commissioner

17 Hayd L. Wayne  
18 Commissioner  
19  
20

21 APPROVED AS TO FORM

22 Bradford A. Spier  
23 Bolvin, Bolvin & Aspell  
24 County Legal Counsel

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 30th day of  
November A.D., 19 77 at 2:19 o'clock P M., and duly recorded in Vol M77  
of Deeds on Page 23219.

FEE None

WM. D. MILNE, County Clerk

By Hayd L. Wayne Deputy