

55439

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

In the Matter of Application )  
for Zone Change 77-28 by )  
Edward Shipsey )

ORDER

THIS MATTER having come on for hearing upon the application of Edward Shipsey for a change of zone, numbered 77-28, for a change from Forestry to SP-1 (Rural-Residential) Zone and public hearings having been heard by the Klamath County Planning Commission on May 16, 1978, May 30, 1978 and July 18, 1978 and wherefrom the testimony, reports and information produced at the hearing by the applicant, members of the Planning Department Staff and other persons in attendance, the Planning Commission recommended approval to the Board of County Commissioners. Following action by the Planning Commission, a public hearing before the Board of County Commissioners was regularly held on August 30, 1978, wherefrom the testimony, it appeared that the record below was accurate and complete and it appears from the testimony, reports and information produced at the hearing below that the application for a change of zone for certain real property described as the SW1/4NW1/4 and W1/4SW1/4, together with the east 60 feet of the NW1/4NW1/4, lying southwesterly of Keno-Worden Highway, all of which is located in Section 17, Township 40, Range 8 plus the NW1/4NE1/4, SE1/4NE1/4, N1/4SE1/4 and SE1/4SE1/4, all being in Section 18, Township 40, Range 8, should be granted.

The Board of County Commissioners makes the following Findings of Fact and Conclusions of Law as required by Ordinance No. 17, the Klamath County Zoning Ordinance:

FINDINGS OF FACT:

1. Testimony from applicant indicated to the Planning Commission that proposed site for change of zone was generally located to the easterly side of Keno-Worden Road with Klamath River Sportsman Estates to the west and Cedar Trails to the south.

2. Testimony on May 16, 1978, from applicant indicated proposed site for change of zone from Forestry to SP-1 (Rural-Residential) was approximately 360 acres in total.

3. Testimony from applicant indicated the property affected by the proposed zone change would have access to the Keno-Worden Road, which is a paved County Road and can carry the kind of traffic that would be generated by such proposed use, that being a subdivision.

4. Testimony on May 16, 1978, indicated to the Planning Commission that proposed change of zone for proposed 360 acres will not have an adverse affect on the surrounding area because of adjoining property on two sides are already zoned Rural-Residential.

5. Testimony produced at the hearing on May 16, 1978, indicated to the Planning Commission that the 360 acres for change of zone was in keeping with land uses in the growing Keno area because testimony indicated a need for additional lots to continue growth at the past rate of growth in the area.

6. L.C.D.C. Goal No. 1 - Citizen Involvement. The Keno Area Committee has actively participated.

7. L.C.D.C. Goal No. 3 - Agricultural Lands. The testimony and letters from farmers and ranchers who are familiar with the land indicate that the land is not agricultural. Those

1 persons include Mr. Lloyd Howard, Mr. Dan O'Connor, Mr. Robert  
2 Puckett, and Mr. Don Johnson. Also, Mr. Tom Orr testified that  
3 the soils were not suitable for agricultural. Mr. Lloyd Howard  
4 stated that the land will sustain only one hundred cows for three  
5 weeks in the spring. Don O'Connor, who stated that at one time he  
6 owned the property, stated that it was good for only one month of  
7 grazing and that it couldn't raise enough feed to pay the taxes.  
8 He also stated that it was not suitable for growing crops.

9 8. L.C.D.C. Coal No. 4 - Forest Lands. The testimony  
10 of Tom Orr and Dan O'Connor, as well as letters from Wesley Stone,  
11 who has twenty-two years of experience with the United States  
12 Forest Service and is still employed by the Forest Service, as  
13 well as a letter from Bob Puckett, who is a long-time resident of  
14 the Reno area, indicate that the land is not commercial forest  
15 land. Wesley Stone's letter is detailed and he points out that  
16 80% of the land had less than 10% minimum stocking needed to  
17 qualify as forest land and that only stringers and islands had  
18 10% or greater, but that they were too scattered to allow any  
19 management. Mr. Dan O'Connor stated that farther up the hill  
20 where the State has land that the soil was better and that there  
21 was timber, but that the land in question was not forest land.  
22 Tom Orr stated that the only trees in the area of any value were  
23 in soil pockets or ravines. He also stated that he could not  
24 have gotten permission from Meyerhaeuser when he was employed  
25 with them to have purchased this property for forest land. Al-  
26 though Michael Howard of the Oregon State Forest Department feels  
27 that the land may qualify as commercial forest, his testimony is  
28 based purely upon potential in that he feels that it could be

1 planted and then developed as a commercial forest. However, this  
2 appears to relate only to approximately 80 acres of the land.  
3 Also, his testimony indicates that the cost would be high and that  
4 the return could not be expected for a period of 60 years. He  
5 stated that site preparation could run as high as \$120.00 per  
6 acre and that the planting could run as high as \$60.00 per acre.  
7 Also, in his letter, he stated that other things would have to be  
8 done, such as spraying and fertilization which could only increase  
9 the cost and he also stated that thinning would be required in  
10 approximately 1987 and approximately 2017. He also stated that  
11 the State would not buy this property.

12 9. L.C.D.C. Coal No. 5 - Open Spaces, Scenic and His-  
13 toric Areas, and Natural Resources. There is no shortage of open  
14 space in the Keno area and the contemplated development is one of  
15 low density with lots of a minimum size of five acres. There is  
16 no particularly scenic or historic area, nor are there any natural  
17 resources needed for future generations that the planned develop-  
18 ment will interfere with. Robert Puckett, a long-time resident of  
19 the Keno area, states that there are no trails, no recreational  
20 purposes, no unusual characteristics or beauty and no park or  
21 historic qualities. The movies which were taken of the property  
22 would indicate that it is not the sort of property that one would  
23 expect a park to be in. Mr. Glenn Howard, an opponent, claims  
24 that it is a virtual wonderland for all kinds of things such as  
25 equestrians and hikers. However, there is no evidence backing  
26 this up as to such use and he admits that he, himself, if he  
27 owned any acreage would not open it to persons wanting to ride  
28 on it. Although it was suggested that the development would



1 interfere with deer habitat, the maps and testimony indicate that  
2 it is not within any particular deer ranges. A map which was in-  
3 cluded with Mr. Ingram's letter shows three deer ranges and the  
4 property is not included in any of those three ranges. Regarding  
5 the question of the eagles, the property is clearly beyond the  
6 buffer zone that has been established in reference to the eagles.  
7 Mr. Opp defines a buffer as "An area of transition between the  
8 uses, in this case from an area of human use to an area of wild-  
9 life use." Clearly, if the planned development is outside of the  
10 buffer zone, there should be no problem. What is more, two other  
11 subdivisions, Cedar Trails and part of Klamath River Sportsman's  
12 Estates, are, in fact, closer to the eagle area and in some places  
13 lie between our planned development and the eagle habitat. Mr. Opp  
14 stated that in comparing the property in question with other  
15 properties in the area, that there was a letter eagle population  
16 on the Shipley-Thomas Tract. Don Gresdel stated that the terrain  
17 lying between the planned development and the eagle area was  
18 steep and rugged country and that there were two ridges and a  
19 valley between the development and the eagle area.

20 10. L.C.D.C. Goal No. 6 - Air, Water, and Land Resources  
21 Quality. There is no evidence that any applicable State of Fed-  
22 eral law relating to any environmental protection will be violated  
23 by the planned development. The water table and wells are suf-  
24 ficient. The Department of Environmental Quality has given a  
25 letter of feasibility regarding the installation of septic tanks  
26 and prior to actual installation of any septic tank, a permit  
27 would have to be obtained from the Department of Environmental  
28 Quality. Opponents have suggested that there would be a sewer

1 problem, yet they admitted that they have run no tests themselves  
2 and that they lack the expertise and qualifications to conduct  
3 any such tests. They state that they are basing their concern  
4 upon a soils report from the SCS, but yet state that they are not  
5 experts on soils. Regarding the water that was found in the holes,  
6 it was stated that the pictures were taken around the fifth of  
7 April and that it was not an unusually wet time. Yet, the re-  
8 port from the U.S. Department of Commerce Weather Bureau states  
9 that for the March 1978, there was a rainfall of 2.39 inches,  
10 whereas the normal precipitation for March was .98 inches, and  
11 that for April the rainfall was 2.42 inches and the normal precip-  
12 itation is .60 inches.

13 11. L.C.D.C. Goal No. 7 - Areas Subject to Natural Dis-  
14 asters and Hazards. There is no evidence that the subject area  
15 is subject to any natural disasters and hazards. The additional  
16 runoff that would be caused by the development is between four and  
17 seven percent and since the planned development only takes up ap-  
18 proximately 50% of that drainage area, the increase below the  
19 drainage area would be approximately one-half that amount. In  
20 other words, between two and four percent. In addition, by the  
21 installation of a reservoir as described to the Commission, any  
22 increase caused by development would be eliminated. The area is  
23 subject to very minimum erosion and in no way to such a degree as  
24 to present any hazard.

25 12. L.C.D.C. Goal No. 8 - Recreational Needs. The sub-  
26 ject property is not presently being used, nor is it the type of  
27 property that would be used in the future for any particular  
28 recreational needs outside of possibly an occasional hunter

1 passing through the property. The property does not have any  
2 historical, archaeological, scenic, natural science, sport,  
3 cultural, or recreational qualities that would qualify it as the  
4 type of property to meet any particular recreational needs.

5 13. L.C.D.C. Goal No. 9 - Economy of the State. The  
6 Keno area is growing, with not only considerable home building  
7 taking place, but also with other developments such as new stores  
8 and a bank. At the present time, the taxes being paid on the sub-  
9 ject property are minimal and it is anticipated that will full  
10 development of the project the annual tax revenue could equal  
11 \$60,000.00. It is also estimated that the cost of the project,  
12 including development of the land and construction of the houses,  
13 including both labor and materials, will equal \$6,000,000.00.  
14 Home building and development is an important industry in the  
15 Klamath Falls area. As stated by Mr. Phair, there were over 600  
16 new homes built in Klamath County last year and that there is a  
17 shortage of lots and, therefore, a need for more lots to be de-  
18 veloped upon which additional homes may be built.

19 14. L.C.D.C. Goal No. 10 - Housing. There is a high  
20 demand for new homes and an equivalent high demand for developed  
21 lots upon which homes can be constructed. Testimony shows that  
22 approximately 100 lots are sold per year and that there is a lead  
23 time on a subdivision of approximately two years, that is from  
24 the time of an approval to the time that the lots are ready for  
25 sale. Although in the past many of the lots were purchased by  
26 absentee owners, at the present time the bulk of the sales are to  
27 people living in the Klamath Falls area, who, in fact, build and  
28 live on the lots. Numerous people are turned away. There were

1 statements signed by approximately 140 persons stating that they  
2 desired the type of lots that are being developed and that there  
3 was presently a shortage of those lots. Also, approximately 25  
4 realtors signed statements as to there being a need for this type  
5 of development. In the Keno area, the trend has become one of  
6 purchasing lots for the purpose of constructing homes for year  
7 around living. Although there are vacant lots in the area, mere  
8 vacancy does not mean that lots are available for a person wanting  
9 to purchase a lot or wanting to build a home on a vacant lot. To  
10 restrict the development of any future lots would be to allow  
11 those people who presently have purchased lots a stranglehold on  
12 any potential purchasers and would, in effect, limit the possi-  
13 bilities of a purchaser buying a lot at a reasonable, affordable  
14 price. As Nancy Locklider stated in her letter, "I would also  
15 like to point out that the ultimate victim of curtailed develop-  
16 ment is the private citizen of ordinary means that is priced out  
17 of the home he is entitled to, because land prices have soared  
18 due to a shortage of available homesites." Although opponents  
19 claim that many lots are available, their statistics are based  
20 upon the Whispering Pines Subdivision, Keno Hillside Acres,  
21 Klamath River Sportsman's Estates, Shamrock, Cedar Trails, Round  
22 Lake Estates, and Klamath River Acres. However, the evidence  
23 shows that based upon these subdivisions there are, in fact, few  
24 lots actually available to a potential purchaser.

25 15. L.C.D.C. Goal No. 11 - Public Facilities and Ser-  
26 vices. The development of the Keno area has been orderly and  
27 efficient. There is a sufficient supply of water (Jerry Corden-  
28 er); the property is suitable for installation of septic systems



1 (DEQ); the new development will not cause a burden on the present  
2 system (Earl Kessler); there will be adequate drainage (Dave  
3 Hammond); the property is included in a present fire district  
4 (Adams); and the development will not interfere with phone service  
5 (Gary Wilhelm). Although the school is close to capacity, the  
6 district already has plans for expansion and, in fact, has the  
7 area in which to expand as the result of a land trade consummated  
8 some years ago with Mr. Shipsey. This expansion of the school is  
9 going to take place whether there is or is not a development by  
10 Mr. Shipsey and Mr. Thomas. Also, the planned development will  
11 not violate any State or Federal regulations regarding such things  
12 as drainage, sewer, water, or pollution.

13 16. L.C.D.C. Goal No. 12 - Transportation. The present  
14 road system in the Keno area is such as to handle any increase in  
15 traffic caused by the subdivision, as set out in letters from  
16 Mr. Earl Kessler of the County Engineer Department. There was  
17 some criticism of the narrowness of an entrance to the subdivi-  
18 sion, but it was stated in the testimony that it is a sixty-  
19 foot wide easement which does provide plenty of room for expan-  
20 sion, if needed. Cost of this will be borne by the developer.

21 17. L.C.D.C. Goal No. 13 - Energy Conservation. There  
22 is nothing about the development that would cause any difficulty  
23 insofar as energy conservation is concerned.

24 18. L.C.D.C. Goal No. 14 - Urbanization. Keno is de-  
25 veloping as a residential area and what is presently proposed by  
26 the developers is in line with what is taking place all around  
27 Keno. It is a scenic area that is suitable for the development  
28 of residential areas. All of the lots will have restrictive

1 covenants on them which will require the building of homes and it  
2 is anticipated that those persons purchasing those homes will be  
3 fulltime residents and most likely employed in either the Keno or  
4 Klamath Falls area. With the exception of approximately 80 acres  
5 of land, it is already designed for residential use according to  
6 the Comprehensive Land Use Plan as is stated in the case of Baker  
7 v. City of Milwaukee, the Court of Appeals uses the following  
8 language found on page 506: "The basic instrument for county or  
9 municipal land use planning is the comprehensive plan. The plan  
10 has been described as a general plan to control and direct the  
11 use of property is a municipality."

12 There are already two other subdivisions in the area,  
13 one to the southeast and one to the east, and, therefore, develop-  
14 ment of this particular parcel is in line with what has already oc-  
15 curred in land immediately adjacent to it. The terrain of the  
16 property is such that a logical dividing line between the resi-  
17 dential use and forestry use would be at the edge of the property,  
18 that edge being close to the crest of the hill as is described by  
19 Mr. Don Gresdel in his testimony.

#### 20 CONCLUSIONS OF LAW:

21 1. The property affected by the change of zone is ad-  
22 equate in size and shape to facilitate those uses normally allowed  
23 in conjunction with such zoning;

24 2. The property affected by the proposed change of zone  
25 is properly related to streets and highways to adequately serve the  
26 type of traffic generated by such uses that may be permitted  
27 therein;

28 3. The proposed change of zone will have no adverse

1 effects or only limited adverse effect on any property or the per-  
 2 mitted uses thereof within the affected area.

3 4. That the proposed change of zone is in keeping with  
 4 land uses and improvements, trends in land development, density  
 5 of land development, and prospective needs for development in the  
 6 affected area.

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

10 NOW, THEREFORE, it is hereby ordered that the applica-  
 11 tion of Edward Shipsey for a change of zone from F (Forestry) to  
 12 SP-1 (Rural Residential) on real property described as being the  
 13 SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ , together with the east 60 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
 14 lying southwesterly of Keno-Worden Highway, all of which is  
 15 located in Section 17, Township 40, Range 8 plus the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
 16 SE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$ , all being in Section 18, Township 40,  
 17 Range 8, Tax Lot 7800 and Tax Lot 500 is hereby granted.

18 DONE AND DATED THIS 21st DAY OF September, 1978.

19 *Neil Kuonen*  
 20 Neil Kuonen  
 21 Chairman

22 *Floyd Wynne*  
 23 Floyd Wynne  
 24 Commissioner

25 *Lloyd Giff*  
 26 Lloyd Giff  
 27 Commissioner

26 APPROVED AS TO FORM:  
 27 Bolvin, Bolvin & Appell

27 BY: *Robert J. Bolvin*

*Communications Section*

28 STATE OF OREGON; COUNTY OF KLAMATH; ss

I hereby certify that the within instrument was received and filed for record on the 25th day of September, A.D. 1978 at 9:00 o'clock A.M., and duly recorded in Vol. 478 of Records on Page 21064

FEE None

WM. D. MILNE, County Clerk

By *Burchar Schetch* Deputy