

KLAMATH COUNTY, OREGON

In the Matter of Application)
for Comprehensive Land Use Plan)
Map Change for Zone Change for)
Edward Shipsey, No. 77-28)

O R D E R

THIS MATTER having come on for hearing upon the application of Edward Shipsey for an amendment to the Comprehensive Land Use Plan accompanying Zone Change 77-28, for a change from Forestry to Recreation-Residential on the westerly 80 acres only of the 360 acres applicant applied for. The remaining 280 acres are already classified Recreation-Residential. Public hearings having been heard by the Klamath County Planning Commission on May 16, 1978, May 30, 1978 and July 13, 1978, 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 Comprehensive Land Use Plan for certain real property described as for the westerly portion, that being 80 acres, located in Tax Lot 1800, Township 40, Range 8, Section 18, 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:

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1. On May 16, 1978, before the Planning Commission, testimony from Staff indicated proposed site for change in Comprehensive Land Use Plan was 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 indicated from applicant, that 80 acres of the 160 acres needed a Comprehensive Land Use Plan change from Forestry to Recreation-Residential and that the remaining 280 acres was already under the Comprehensive Land Use Plan classification of Recreational-Residential.

3. The property affected by the proposed Comprehensive Land Use Plan Change has access to Keno-Worden Road, a paved County road, which will be adequate to serve the type of traffic generated.

4. The proposed Comprehensive Land Use Plan Change will have limited adverse effect on property in the area because adjoining property on two sides is Recreational Residential.

5. The proposed Comprehensive Land Use Plan Change is in keeping with the land uses and trends in the growing Keno area.

6. Testimony indicates a need for property to continue the past rate of growth.

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

8. 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 persons include Mr. Lloyd Howard, Mr. Dan O'Connor, Mr. Robert Puckett, and Mr. Don Johnson. Also, Mr. Tom Orr testified that the soils were

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

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

1 and that the return could not be expected for a period of 60 years.
2 He stated that site preparation could run as high as \$120.00 per
3 acre and that the planting could run as high as \$60.00 per acre.
4 Also, in his letter, he stated that other things would have to be
5 done, such as spraying and fertilization which could only increase
6 the cost and he also stated that thinning would be required in ap-
7 proximately 1987 and approximately 2017. He also stated that the
8 State would not buy this property.

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

1 the question of the eagles, the property is clearly beyond the buf-
2 fer zone that has been established in reference to the eagles. Mr.
3 Opp defines a buffer as "An area of transition between the uses, in
4 this case from an area of human use to an area of wildlife use."
5 Clearly, if the planned development is outside of the buffer zone,
6 there should be no problem. What is more, two other subdivisions,
7 Cedar Trails and part of Klamath River Sportsman's Estates, are, in
8 fact, closer to the eagle area and in some places lie between our
9 planned development and the eagle habitat. Mr. Opp stated that in
10 comparing the property in question with other properties in the area,
11 that there was a lesser eagle population on the Shipsey-Thomas Tract.
12 Don Grosdel stated that the terrain lying between the planned devel-
13 opment and the eagle area was steep and rugged country and that
14 there were two ridges and a valley between the development and the
15 eagle area.

16 11. L.C.D.C. Goal No. 6 - Air, Water, and Land Resources
17 Quality. There is no evidence that any applicable State or Federal
18 law relating to any environmental protection will be violated by
19 the planned development. The water table and wells are sufficient.
20 The Department of Environmental Quality has given a letter of
21 feasibility regarding the installation of septic tanks and prior
22 to actual installation of any septic tank, a permit would have to
23 be obtained from the Department of Environmental Quality. Opponents
24 have suggested that there would be a sewer problem, yet they ad-
25 mitted that they have run no tests themselves and that they lack the
26 expertise and qualifications to conduct any such tests. They state
27 that they are basing their concern upon a soils report from the SCS,
28 but yet state that they are not experts on soils. Regarding

1 the water that was found in the holes, it was stated that the pic-
2 tures were taken around the fifth of April and that it was not an
3 unusually wet time. Yet, the report from the U.S. Department of
4 Commerce Weather Bureau states that for the March 1978, there was
5 a rainfall of 2.39 inches, whereas the normal precipitation for
6 March was .98 inches, and that for April the rainfall was 2.42 inches
7 and the normal precipitation is .60 inches.

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

19 13. L.C.D.C. Goal No. 8 - Recreational Needs. The subject
20 property is not presently being used, nor is it the type of property
21 that would be used in the future for any particular recreational
22 needs outside of possibly an occasional hunter passing through the
23 property. The property does not have any historical, archaeological,
24 scenic, natural science, sport, cultural, or recreational qualities
25 that would qualify it as the type of property to meet any particular
26 recreational needs.

27 14. L.C.D.C. Goal No. 9 - Economy of the State. The Keno
28 area is growing, with not only considerable home building taking

1 place, but also with other developments such as new stores and a
2 bank. At the present time, the taxes being paid on the subject
3 property are minimal and it is anticipated that with full develop-
4 ment of the project the annual tax revenue could equal \$60,000.00.
5 It is also estimated that the cost of the project, including develop-
6 ment of the land and construction of the houses, including both labor
7 and materials, will equal \$6,000,000.00. Home building and develop-
8 ment is an important industry in the Klamath Falls area. As stated
9 by Mr. Phair, there were over 600 new homes built in Klamath County
10 last year and that there is a shortage of lots and, therefore, a
11 need for more lots to be developed upon which additional homes may
12 be built.

13 15. L.C.D.C. Goal No. 10 - Housing. There is a high de-
14 mand for new homes and an equivalent high demand for developed lots
15 upon which homes can be constructed. Testimony shows that approxi-
16 mately 100 lots are sold per year and that there is a lead time on a
17 subdivision of approximately two years, that is from the time of an
18 approval to the time that the lots are ready for sale. Although in
19 the past many of the lots were purchased by absentee owners, at the
20 present time the bulk of the sales are to people living in the
21 Klamath Falls area, who, in fact, build and live on the lots.
22 Numerous people are turned away. There were statements signed by
23 approximately 140 persons stating that they desired the type of lots
24 that are being developed and that there was presently a shortage of
25 those lots. Also, approximately 25 realtors signed statements as to
26 there being a need for this type of development. In the Keno area,
27 the trend has become one of purchasing lots for the purpose of con-
28 structing homes for year around living. Although there are vacant

1 lots in the area, mere vacancy does not mean that lots are available
2 for a person wanting to purchase a lot or wanting to build a home on
3 a vacant lot. To restrict the development of any future lots would
4 be to allow those people who presently have purchased lots a strangle-
5 hold on any potential purchasers and would, in effect, limit the
6 possibilities of a purchaser buying a lot at a reasonable, affordable
7 price. As Nancy Jacklinder stated in her letter, "I would also like
8 to point out that the ultimate victim of curtailed development is
9 the private citizen of ordinary means that is priced out of the home
10 he is entitled to, because land prices have soared due to a shortage
11 of available homesites." Although opponents claim that many lots
12 are available, their statistics are based upon the Whispering Pines
13 Subdivision, Keno Hillside Acres, Klamath River Sportsman's Estates,
14 Shamrock, Cedar Trails, Round Lake Estates, and Klamath River Acres.
15 However, the evidence shows that based upon those subdivisions there
16 are, in fact, few lots actually available to a potential purchaser.

17 16. L.C.D.C. Goal No. 11 - Public Facilities and Services.
18 The development of the Keno area has been orderly and efficient.
19 There is a sufficient supply of water (Jerry Cordenier); the prop-
20 erty is suitable for installation of septic systems (DEQ); the new
21 development will not cause a burden on the present system (Earl
22 Kessler); there will be adequate drainage (Dave Hammond); the prop-
23 erty is included in a present fire district (Adams); and the
24 development will not interfere with phone service (Gary Wilhelms).
25 Although the school is close to capacity, the district already has
26 plans for expansion and, in fact, has the area in which to expand
27 as the result of a land trade consummated some years ago with Mr.
28 Shipnery. This expansion of the school is going to take place

1 whether there is or is not a development by Mr. Shipsey and Mr.
2 Thomas. Also, the planned development will not violate any State
3 or Federal regulations regarding such things as drainage, sewer,
4 water, or pollution.

5 17. L.C.D.C. Goal No. 12 - Transportation. The present
6 road system in the Keno area is such as to handle any increase in
7 traffic caused by the subdivision, as set out in letters from Mr.
8 Earl Kessler of the County Engineering Department. There was some
9 criticism of the narrowness of an entrance to the subdivision, but
10 it was stated in the testimony that it is a sixty-foot wide easement
11 which does provide plenty of room for expansion, if needed. Cost of
12 this will be borne by the developer.

13 18. L.C.D.C. Goal No. 13 - Energy Conservation. There is
14 nothing about the development that would cause any difficulty inso-
15 far as energy conservation is concerned.

16 19. L.C.D.C. Goal No. 14 - Urbanization. Keno is develop-
17 ing as a residential area and what is presently proposed by the
18 developers is in line with what is taking place all around Keno.
19 it is a scenic area that is suitable for the development of resi-
20 dential areas. All of the lots will have restrictive covenants on
21 them which will require the building of homes and it is anticipated
22 that those persons purchasing those homes will be fulltime residents
23 and most likely employed in either the Keno or Klamath Falls area.
24 With the exception of approximately 80 acres of land, it is already
25 designed for residential use according to the Comprehensive Land Use
26 Plan as is stated in the case of Baker v. City of Milwaukie, the
27 Court of Appeals uses the following language found on page 506:
28 "The basic instrument for county or municipal land use planning is

1 the comprehensive plan. The plan has been described as a general
2 plan to control and direct the use of property in a municipality."

3 There are already two other subdivisions in the area,
4 one to the southeast and one to the east, and, therefore, develop-
5 ment of this particular parcel is in line with what has already
6 occurred in land immediately adjacent to it. The terrain of the
7 property is such that a logical dividing line between the resi-
8 dential use and forestry use would be at the edge of the property,
9 that edge being close to the crest of the hill as is described by
10 Mr. Don Gresdel in his testimony.

11 CONCLUSIONS OF LAW:

12 1. The property affected by the Comprehensive Land
13 Use Plan Change is adequate in size and shape to facilitate those
14 uses normally allowed in conjunction with such uses.

15 2. The property affected by the proposed Comprehensive
16 Land Use Plan Change is properly related to streets and highways
17 to adequately serve the type of traffic generated by such uses
18 that may be permitted thereon.

19 3. The proposed Comprehensive Land Use Plan Change
20 will have no adverse effect, or only limited adverse effect, on
21 any property or the permitted uses thereof in the affected area.

22 4. The proposed Comprehensive Land Use Plan Change is
23 in keeping with land uses and improvements, trends of land devel-
24 opment, density, and prospective needs for development in the
25 affected area.

26 5. The proposed Comprehensive Land Use Plan Change
27 represents the highest, best, and most appropriate use of the
28 land affected.

NOW, THEREFORE, it is hereby ordered that the application for Comprehensive Land Use Plan Map Change for Edward Shipsey from Forestry to Recreational-Residential on certain real property described as that westerly portion of Tax Lot 7800, located in Township 40, Range 8, Section 18, is hereby granted.

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

Nell Kuonen
Nell Kuonen
Chairman

Floyd Wynne
Floyd Wynne
Commissioner

Lloyd Gift
Commissioner

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

By Robert L. Boivin

STATE OF OREGON, COUNTY OF Klamath; ss.

ss. I, County Clerk, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of Klamath County

on the 21st day of September, A.D. 1978 at 9:00 o'clock A.M., and
was recorded in Vol. 103 of Deeds on Page 21075

W. D. MILNE, County Clerk

W. D. Milne

No Fee