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BEFORE THE HEARINGS OFFICER

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KLAMATH COUNTY, OREGON

1 In the Matter of Request for)
2 Comprehensive Land Use Plan and)
3 Zone Change No. 4-85 for)
4 Walter Petersen, Applicant)

5 A hearing was held on this matter on June 20, 1985, pursuant
6 to notice given in conformity with Ordinance No. 45.2, Klamath
7 County, before the Klamath County Hearings Officer, Brad Aspell.
8 The applicant was present. The Klamath County Planning Department
9 was represented by Jonathan Chudnoff. The Hearings Reporter was
10 Karen Burg.

11 Evidence was presented on behalf of the Department and on
12 behalf of the applicant. There were adjacent property owners
13 who expressed opposition to the granting of the proposed plan
14 and zone change.

15 The following exhibits were offered, received, and made a
16 part of the record:

17 Klamath County Exhibit A, Staff Report
18 Klamath County Exhibit B, Plot Plan
19 Klamath County Exhibit C, Assessor's Map
20 Klamath County Exhibit D, Photo
21 Klamath County Exhibit E, Letter from Pelican Tractor
22 Klamath County Exhibit F, City Planner's Comments
23 Klamath County Exhibit G, Letter from Norman and Alice Wells
24 Klamath County Exhibit H, Petition from owners on Miller Ave.

25 The hearing was then closed, and based upon the evidence
26 submitted at the hearing, the Hearings Officer made the following
27 Findings of Fact:
28 //

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FINDINGS OF FACT:

1. The subject property is located at Lot 22, Pleasant Home Addition, Section 2, Township 39S, Range 9 EWM, Klamath County, Oregon. The street address is 5636 Miller Avenue, Klamath Falls, Oregon. The subject property is located generally between Homedale and Madison Streets. The applicant seeks a Comprehensive Land Use Plan Change from Urban to General Commercial and a Zone Change from Suburban Residential (RS) to General Commercial (CG). Applicant seeks the Comprehensive Land Use Plan and Zone Change for parking, storage of machinery and for possibly erecting a commercial building.

2. The subject parcel is 80 feet by 240 feet and is located within the Klamath Falls Urban Growth Boundary. Water is provided by the City of Klamath Falls, and sanitation by the South Suburban Sanitary District. Electricity is available through Pacific Power and Light Company, gas is provided by CP National Corporation, and telephone service is provided by Pacific Northwest Bell. The property lies within the Klamath Irrigation District and is served by South Suburban Fire Protection District.

3. The primary access to the property is by Miller Street.

4. The property currently has an older single-family dwelling on it which is shown as Klamath County Exhibit B. The property is approximately 19,200 square feet and is generally level with vegetation consisting of native trees and grass. Soil Conservation Service soil classes and timber site productivity ratings are not applicable.

5. No increased use of public facilities and services would result from the change.

1 6. Exhibit C from the hearing, together with testimony from
2 the applicant and adjoining neighbors reveal that the block on
3 which the subject property situate is bordered to the south by
4 the Klamath Falls-Lakeview Highway also known as State Highway
5 Route 39 or South Sixth Street. Thirty-two of 37 separate tax lots
6 on the block are presently designated Urban on the Comprehensive
7 Land Use Plan and General Commercial in the zoning ordinance including
8 11 of 14 lots fronting on Miller Avenue being designated urban
9 on the Comprehensive Land Use Plan and General Commercial in the
10 zoning ordinance including 11 of 14 lots fronting on Miller Avenue
11 being designated urban and general commercial. The three other
12 lots are owned by Mary Woodard, Bill Ransom and Chuck Swafford.
13 None of these individuals expressed an opinion at the time of
14 the hearing. Ten of the subject lots were changed from residential
15 to commercial in the CLUP and Zone Change 17-82. The property
16 remains in use for single-family, residential dwellings. Property
17 primarily to the direct east of subject property is either utilized
18 by Les Schwab Tires or is undeveloped. Miller Avenue is a paved
19 County Street maintained to current road standards.

20 7. Applicant testified that adjacent property owners had
21 shown interest in the subject property and produced Exhibit E
22 of Pelican Tractor Company in support thereof. Notice was pro-
23 vided to the South Suburban Area Committee, however, no reports
24 were received from the County. The notice was given to adjacent
25 property owners, and objections were duly noted by Norman and Alice
26 Wells (Exhibit G) whose primary concern was that commercial
27 development in the area would reduce property values. Addition-
28 ally, Mr. Ed Hampton expressed his concerns at the hearing and
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1 generally felt that with adequate restrictions including fencing
2 and no through access of traffic, the adverse effect, if any,
3 would be substantially minimized. Finally, Mr. Joseph T. Riker,
4 III, on behalf of the City of Klamath Falls, objected based upon:
5 a) failure of the applicant to provide the intended use of the
6 property to justify zone change; and b) upon the ground that
7 the proposed zone change would split an existing suburban residential
8 area causing a spot zone within the residential use area. The
9 Hearings Officer finds from the evidence produced that Mr. Riker
10 is incorrect in asserting that the land use change would consti-
11 tute spot planning in that while other properties fronting Miller
12 Avenue have not been developed for commercial uses, the owners
13 are legally in their rights to do so. Justification for the change
14 does, however, concern your Hearings Officer.

15 8. Section 48.003 of the Community Development Ordinance
16 provides the review criteria for a Comprehensive Land Use Change.
17 "A proposed change of Comprehensive Plan Designation shall be approved
18 if the reviewing authority finds that: A) the proposed change
19 is in compliance with the Statewide Planning Goals; B) the proposed
20 change is in conformance with all policies of the Klamath County
21 Comprehensive Plan; and C) the proposed changes supported by
22 specific studies or other factual information documents the public
23 need for the change."

24 9. Section 47.003 of the Land Development Code provides the
25 review criteria for a Zone Change. It states that "A proposed
26 change of zone shall be approved if the reviewing authority shall
27 find that: A) The change is in conformance with the Comprehensive
28 Plan, and all other provisions of the Land Development Code; and

1 B) The property affected by the change of zone is adequate in
2 size and shape to facilitate those uses which are normally allowed
3 in conjunction with such zoning; C) The property affected by
4 the proposed change of zone is properly related to streets to
5 adequately serve the type of traffic generated by such uses that
6 may be permitted; D) The proposed change of zone will have no
7 adverse effect on the appropriate use and development of abutting
8 properties.

9
10 CONCLUSIONS OF LAW AS TO COMPREHENSIVE LAND USE PLAN CHANGE:

- 11 1. Goal 1, Citizen Involvement, has been met as notice has
12 been published and the adjacent property owners and agencies have
13 been notified and comments have been noted above.
- 14 2. Goals 3, 4, and 5 are not applicable to this application.
- 15 3. Goal 5 is applicable in that the Hearings Officer con-
16 cludes that air, water and land resources quality would not be
17 affected adversely from the current permitted zone designation.
- 18 4. Goals 7 and 8 are specifically found to be inapplicable.
- 19 5. The Hearings Officer finds that Goal 9, County Economy,
20 would be enhanced by allowing for commercial growth and new development
21 even though the exact nature is presently incapable of ascertain-
22 ment.
- 23 6. While demolition of the existing house would reduce avail-
24 able housing, the Hearings Officer takes judicial note of the
25 surplus of available housing within the community and Goal 10
26 has been met.
- 27 7. Goal 11 has been met. The findings above demonstrate
28 that all reasonably necessary public facilities and services are
available.

1 8. As to Goal 12, Transportation, the Hearings Officer con-
2 cludes regular and through access from the subject property onto
3 Miller Avenue would adversely affect traffic. For this reason,
4 the Hearings Officer concludes that the property shall be appropri-
5 ately fenced and gated along Miller Avenue and that access shall
6 not be gained to the subject site from Miller Avenue.

7 9. Goal 13, Energy Conservation, can marginally be served
8 by increasing the density of commercial development in an area.

9 10. Goal 14, Urbanization, has been met. The real property
10 is located within Klamath Falls Urban Growth Boundary.

11 11. Goal 2 provides the most difficult of review criteria
12 provided. The zone change must comply with the criteria of Land
13 Development Code Section 47.003. It must be shown that the property
14 is adequate for the use as allowed by the proposed zone, the streets
15 are adequate to carry the type of traffic generated by commercial
16 uses, the proposed change would have no adverse effects on the
17 use and development of neighboring properties.

18 ZONE CHANGE:

19 1. The dimensions of the property and its layout are adequate
20 in size and shape and uses allowed by the proposed zone.

21 2. Miller Avenue is adequate in size to carry the type of
22 traffic generated by generally accepted commercial uses. However,
23 the Hearings Officer concludes that as a condition to approval
24 of the Comprehensive Land Use and Zone Change, that the applicant
25 shall be required to fence the subject property so that through
26 traffic will not be permitted from South Sixth Street onto Miller
27 Avenue. Appropriate gates shall remain in use and operation.

28 3. That with the conditions stated above, the Hearings

1 Officer concludes that the proposed change would have no adverse
2 effects upon the use and development of abutting properties keep-
3 ing in mind the fact that the majority of abutting properties
4 on Miller Avenue presently are designated General Commercial in
5 the Comprehensive Land Use Plan and Zoning Ordinance. The Hearings
6 Officer finds continued use and development of the property on
7 the south side of Miller Avenue will be in commercial nature.

8 4. The most significant issue is the documentation of public
9 need for the change. The Hearings Officer concludes from the
10 testimony that the interest and expansion of Les Schwab and Pioneer
11 Tractor Co. within this area and the immediate need for adjoining
12 or abutting lands shows a sufficient public need to justify the
13 intended change. Adjacent lands will be utilized first in the
14 expansion of commercial activities where practical.

15 CONCLUSION OF LAW AND DECISION:

16 1. The contents of the Land Use Plan and Zone Change satisfy
17 all applicable Klamath County Development criteria and policies,
18 subject to inclusion of the following conditions:

19 a) The applicant shall fence a portion of the property
20 on Miller Avenue and install a gate providing the same remains
21 closed at all times.

22 b) That development of the subject lot shall be limited
23 to commercial use indident to one or more of the adjoining properties
24 fronting on South Sixth Street, the primary access to the property
25 shall be gained through such other property as fronts on South
26 Sixth Street.

27 2. The CLUP and Zone Change is in conformity with the
28 Klamath County Comprehensive Land Use Plan as adopted.

1 The Hearings Officer, based on the foregoing Findings of
 2 Fact and Conclusions of Law, accordingly orders as follows:

3 That real property described as:

4 "being genrally located at 5636 Miller Avenue, and
 5 more particularly described as Lot 22, Pleasant Home
 Tracts, No. 2, Klamath County, Oregon,"

6 is hereby granted a Comprehensive Land Use Plan and Zone Change
 7 with conditions in accordance with the terms of the Klamath County
 8 Zoning Ordinance, and, henceforth, will be allowed a plan change
 9 from Urban to General Commercial and a Zone Change from Suburban
 10 Residential to General Commercial.

11 Entered at Klamath Falls, Oregon, this 16 Day of July
 12 1985.

13
 14 KLAMATH COUNTY HEARINGS DIVISION

15
 16 Bradford
 17 Hearings Officer

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ day
 of July A.D., 19 85 at 2:19 o'clock P M., and duly recorded in Vol. M85
 of Deeds on Page 11316.

FEE NONE

Evelyn Biehn County Clerk
 By Pam Smith

Return: Commissioners Journal