

KLAMATH COUNTY, OREGON

1 IN THE MATTER OF REQUEST FOR)
 2 COMPREHENSIVE LAND USE PLAN AND)
 3 ZONE CHANGE 7-87 FOR JOHN SCHOONOVER,)
 (LUBA FINAL ORDER AND OPINION 88-025))

ORDER NO. 89-1994 I. NATURE OF REQUEST

5 This application was approved per Board Order No. 88-216,
 6 March 23, 1988. This Order was appealed by the Department of
 7 Land Conservation and Development and remanded by the Land Use
 8 Board of Appeals, July 22, 1988.

9 A public hearing was held February 28, 1989, being a joint
 10 hearing of the Klamath County Planning Commission and Board of
 11 County Commissioners.

12 II. NAMES OF THOSE INVOLVED

13 The applicant, John Schoonover, was present and testified
 14 in support of the application. The Planning Department was
 15 represented by Kim Lundahl, Senior Planner. The recording secre-
 16 tary was Karen Burg. Michael L. Spencer, legal counsel, was
 17 present. Members of the Board of Commissioners who sat at this
 18 hearing were: Roger Hamilton, Ted Lindow, and Harry Fredricks.
 19 Members of the Planning Commission who sat at this hearing were:
 20 John Monfore, Ned Livingston, Susan Crismon, Doug Everett, Don
 21 McCasland, John Kite, and Hal Pearce.

22 Written data submitted in addition to that reflected in
 23 Order No. 88-216:

24 Exhibit M - Order on Motion to Dismiss (Holston 5-20-88)

25 Exhibit N - Greenleaf Letter Dated 2-27-89 and Attach-
 26 ments (Enforcement Orders 89-EO-491 and 492)

27 Exhibit O - Lundahl Memo Dated 2-28-89 and Attachments
 28 (Remand and Applicant Responses)

89 MAR 17 PM 2 56

1 III. RELEVANT FACTS

2 The Klamath County Planning Department file, and all contents
3 thereof, and testimony received, are incorporated in this Order
4 as evidence.

5 The LUBA Final Opinion and Order (88-025) sustained in whole
6 the following three assignments of error:

7 FIRST ASSIGNMENT OF ERROR

8 "The County violated Goal 2, Part II(b), Goal 4 and
9 ORS 197.732 when it approved the plan amendment and
10 zone change. It also failed to comply with OAR 660-
04-028 in justifying a 'committed' exception to Goal 4."

11 SECOND ASSIGNMENT OF ERROR

12 "The County erred in relying on past land divisions
13 made without application of the goals to demonstrate
irrevocable commitment of the subject property."

14 THIRD ASSIGNMENT OF ERROR

15 "The County erred in relying on development of the subject
16 property without application of state land use laws in
concluding that the subject property was irrevocably
17 committed to nonresource use."

18 A fourth assignment of error was partially sustained.

19 FOURTH ASSIGNMENT OF ERROR

20 "The County erred in failing to demonstrate compliance
21 with its own ordinances governing plan and zone changes."

22 Discussion of this assignment is located on pages 9-10 of the
23 attached order (88-025).

24 Applicant submitted responses dated January 19, and February
25 3, 1989, in response to the LUBA final opinion and order.

26 IV. FINDINGS

27 The Board of Commissioners and Planning Commission find the
28 evidence and testimony submitted by applicant to be nonresponsive

1 to the assignments of error. Applicant chose to accept denial
 2 of application rather than offered continuance to April 25, 1989.

3 In applicants letter of January 19, 1989, he states:

4 "Applicant did refuse, and continues to refuse to agree
 5 to swear to an exception as ambiguous as 'irrevocably
 committed.'"

6 V. ORDER

7 Therefore, the Board of Commissioners accepts the recommenda-
 8 tion of the Planning Commission, and it is unanimously ordered
 9 the request for a Change of Land Use Plan from Forestry to
 10 Rural and Zone Change from Forestry to Rural, 5 Acre is denied.

11 Dated this 15th Day of March, 1989.

12 BOARD OF COUNTY COMMISSIONERS

13 Ted Lindow
 14 Ted Lindow, Chairman

15 Harry Fredricks
 16 Harry Fredricks, Commissioner

17 Roger Hamilton
 18 Roger Hamilton, Commissioner

19 Approved as to Form and Content:

20 Michael Spencer
 21 Michael Spencer, County Counsel

22 STATE OF OREGON,
 23 County of Klamath ss.

24 Filed for record at request of:

25 Klamath County
 26 on this 17th day of March A.D., 1989
 27 at 2:56 o'clock PM. and duly recorded
 28 in Vol. M89 of Deeds Page 4599
 Evelyn Biehn
 County Clerk

By Debra Muscarello

Fee, none

Deputy.