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BEFORE THE BOARD OF COMMISSIONERS OF  
KLAMATH COUNTY, OREGON

In the Matter of CLUP/ZC 5-91 )  
for JAMES CHAFFIN )

ORDER 92-020

1.

NATURE OF THE APPLICATION

This matter came before the Board of County Commissioners for public hearing on May 28, 1991.

The Applicant is requesting a comprehensive land use plan and zone change from Non Resource/NR to Rural/R-1 on 50 acres located approximately 7 miles north of Klamath Falls at the junction of Shady Pine Road and Highway 97. This application was reviewed pursuant to Articles 47 and 48 of the Klamath County Land Development Code (LDC).

2.

NAMES OF THOSE INVOLVED

The Applicant, James Chaffin, was present and was represented by William M. Ganong, Attorney at Law. The Planning Department was represented by J. Kim Lundahl, Senior Planner, and the Recording Secretary was Karen Burg. The members of the Board of Commissioners were Harry Fredricks, Chairperson, Ed Kentner and Wes Sine. The County Planning Commission, with a quorum present, participated in an advisory manner. County Counsel, Rod Davis, was also present. Exhibits A through K were admitted into evidence. The Planning Commission unanimously recommended that the Board of Commissioners approve the subject request.

## 3.

## LEGAL DESCRIPTION

A portion of the SW1/4, Section 31, Township 37S, Range 9 East, W.M., and the SE1/4 of Section 36, Township 37 S, Range 8 E.W.M. lying easterly of the Highway 97 N right of way and southerly of the right of way of Shady Pine Road.

## 4.

## FINDINGS OF FACT

A. The Applicant requested a CLUP/ZC from Non-Resource/NR to Rural/R-1 on 50 acres located north of Klamath Falls. Adjacent zoning designations include NR to the south and east, EFU-CG to the north and R-1 1/4 mile to the east. The zoning maps included in the record show a transition from low lying agricultural land, north of the subject property, to rural residential uses, east of the subject property and in the Algoma area, and south of the subject property in the Wocus Area, Highway 97 N and the Southern Pacific Railroad mainline separate the subject property from Upper Klamath Lake to the West.

B. The subject property lies on the northwest point of the Plum Hills. There are steep slopes (25 degrees) on the west and north sides of the property, but the slopes decrease to the south and east. The land is composed primarily of SCS soil type 51E-Lorella Calimas Association. While the soils are well drained, they are not generally useable for agricultural purposes because of the slope. Some areas of the association near Klamath Falls, including the vicinity of the subject property, are used for home sites. This soil type has an agricultural classification of VIE and VIIS. There is also some 66F-

Rock outcrop-Dehlinger complex along the westerly boundary of the property. This area will not be developed due to the steep slope. The 66F soil has a VIIS SCS subclass rating.

Similar rural residential developments, such as Cove Point, are built on identical soils. Other areas, such as the Lynnewood residential subdivision are built on similar slope and more restrictive soils.

C. The Applicant intends to submit an Application for a rural residential subdivision dividing approximately 20 acres of the parcel into 15 lots of one acre or larger. Access to the property is from Shady Pine Road. Said road has adequate capacity to accommodate the traffic which would be generated by the proposed subdivision.

The only other public services which may be required by the proposed subdivision are public schools and fire protection. The property is in Fire District No. 1 and the Applicant is aware of and can provide the water availability requirements of said District. The nearest fire station is approximately five miles south of the subject property. The property is in the Klamath Falls elementary and Union High School Districts and there is ample capacity at the schools which students from this property would attend.

The property is approximately seven miles north of Merle West Medical Center and the attendant physicians' offices. It is also seven miles from the Campus Square Shopping Center which includes a grocery store, banks and other services.

Any houses which are built on the subject property will be served by individual domestic water wells and septic systems. The Klamath County Department of Health Services completed a site evaluation for

one single family residence on February 20, 1991, and approved that property for an on-site sewage disposal system.

The Applicant testified that well drillers familiar with this area are confident that ample domestic water will be available at a depth of 150 feet.

Drainage from the property will be channeled to flow under Shady Pine Road where it will be collected by a farm drain and be pumped into Klamath Lake.

D. The vegetation on the subject property is composed of native grasses, a few wild plum bushes and several juniper trees. The property has no timber site classification and the lack of trees, particularly commercial species, demonstrates that it is not forest land.

E. The property has been vacant and unused for many years and currently has no other potential use.

F. The road which will provide access to the proposed subdivision lots has been roughed in and is engineered to meet all county road development standards. The plan and profile for the road will be submitted to the Klamath County Public Works Department to insure that the required development standards are met.

G. The property offers beautiful views of Upper Klamath Lake and the surrounding hills, Pelican Butte and the Crater Lake rim. Its Westerly slope will allow passive and active solar systems. The slope of the land will protect the blocking of the view and solar access.

5.

#### REVIEW CRITERIA

Article 48 of the LDC sets out the criteria for review of a change



of Land Use Plan designation. The proposed change shall be approved if the reviewing authority finds that:

A. The proposed change is in compliance with the Statewide Planning Goals; and

B. The proposed change is in conformance with all policies of the Klamath County Comprehensive Plan.

Article 47 of the LDC sets out the criteria for review of a change of zone. The request shall be approved if the Board finds:

A. The change of zone is in conformance with the Comprehensive Plan and all provisions of the Land Development Code;

B. The property affected by the change of zone is adequate in size and shape to facilitate those uses that are normally allowed in conjunction with the zoning;

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

D. The proposed change of zone will have no adverse effect on the appropriate use and development of abutting properties.

## 6.

## DEFINITIONS

The Applicant requests a CLUP change from Non-Resource to Rural and a zone change from Non-Resource (NR) to Rural (R-1). The purpose of said designations are defined as follows:

## A. Non-Resource:

PURPOSE: The purpose of this zone designation is to implement the non-resource land use designation of the Comprehensive Plan. These are lands that were found to have a low Forest Site Class potential, are predominantly SCS Soil Capability Class VII and VIII, and are not identified as wildlife or fish habitat, are not necessary for watershed protection or recreational use, are not irrigated or irrigable, and are not necessary to permit farm or forest practices to be undertaken on adjacent or nearby lands.

## B. Rural (R-1):

PURPOSE: The purpose of this zone is to establish areas for Rural Residential living styles. These areas allow for the pursuit of limited agricultural activities. These zones also serve to implement the Comprehensive Plan policy calling for buffers between Urban and Agricultural areas.

Typically, the zone is appropriate in rural or semi-rural areas, small family farm areas, and in areas with a pattern of one acre rural residential development. This zone may be applied where existing or proposed public facilities or services are appropriate for a one acre density, or where there is no history of subsurface sewage problems, water problems, or other natural limitations. This zone is intended to implement the Comprehensive Plan designation of rural. This zone may be applied to rural lands, rural communities, and rural service centers.

The uses allowed outright in said designations are similar in that they only allow single family residences and essential services. Essential services are allowed outright in all of the County's zones.

The major differences in potential uses within the zones are found in the conditional uses. Subject to the conditional use permit criteria, the R-1 zone allows multi-family residential, mobile home parks and some low impact professional services such as clinics. Prior to granting a conditional use permit, the review authority must find

that the proposed use is in compliance with the Klamath County Land Use Plan and LDC.

## 7.

## DLCD CONCERNS

On April 10, 1991, the County Planning Department gave written notice to the Oregon Department of Land Conservation and Development of the subject application. On May 14, 1991 the Planning Department received a letter from the DLCD requesting that the Board deny the subject request because it would convert rural land to an urban use.

ORS 197.610(3) requires that the DLCD notify the County of its objections at least 15 days before the Board's hearing. This matter was scheduled for final hearing on May 28, 1991.

The Board finds that DLCD's said comments were not filed in a timely manner.

## 8.

## CLUP CRITERIA, FINDINGS AND CONCLUSIONS

We make the following findings of facts and conclusions of law concerning the CLUP change review criteria:

A. That the proposed change is in compliance with statewide planning goals. The relevant statewide planning goals are:

(1) GOAL 1 - CITIZEN INVOLVEMENT. The Board finds this application was properly noticed and that the opportunity for "citizen involvement" was afforded

(2) Goal 2 - Land Use Planning. For the reasons stated below, no exceptions to land use goals are required by this application. The existing public facilities are adequate to meet the needs of the proposed development and the proposal will require very few public

services. The proposed change will not have significant effect beyond the immediate area of the change.

(3) Goals 3, 4 and 5 - Agriculture, Forestry - Open Spaces. In initially planning and zoning the subject property non-resource, we found that the property was not agricultural or forest land, was not needed to permit farm or forest practices to be undertaken on adjacent or nearby lands, and that it has no significant resources. There is no evidence or other indication that said findings should be changed at this time.

(4) Goal 10 - Housing. This goal requires that the County plan and provide for flexibility of housing location, type and density.

Goal 10, Policy 4 of our CLUP provides:

The County shall permit development of rural land for rural residential use on suitable lot sizes.

Rationale:

To provide for the housing needs of citizens of the county.

Implementation:

Development will be permitted in accordance with the Comprehensive Plan and the Land Development Code.

In our order in CLUP/ZC 6-89 for H. W. and Elizabeth Turnquist, we found that Klamath County is experiencing an influx of predominantly middle age to elderly people who have retired from high tech and aircraft industries in California and want to live in rural residential areas. This property meets said need perfectly as it offers a rural residential setting in close proximity to the medical and commercial services available in Klamath Falls.

(5) Goal 11-Public Facilities and Services. Goal 11 requires that the County determine, plan and provide public facilities and



services appropriate for, but limited to, the needs of urban and rural land uses. Our CLUP and LCD define the level of services appropriate to rural development and prohibit intensive services, such as community sewer systems, in rural areas without taking an exception to Goal 14. Goal 11, Policies 13 and 16 of our CLUP establish the level of service appropriate for rural land.

Policy 13 provides:

New subdivisions will not be approved in rural communities or any other rural area unless there are provisions for the coordinated development of water, sewage and fire protection services appropriate to that area and at levels capable of adequately serving the new development.

Rationale:

To prevent new development from occurring without necessary public facilities and services appropriate to that area.

To prevent new development from overburdening existing facilities and services or overtaxing local taxpayers.

Implementation:

Review procedures shall be established for development proposals so that appropriate public facilities and services will be included before the development is approved.

Policy 16 provides in part:

The County shall establish appropriate densities and corresponding levels of services for rural lands.

Rationale:

The level of service provided for unincorporated communities, rural residential, and rural resource lands must be evaluated to assure lifestyles and characteristics of those areas are maintained in accordance with Statewide Planning Goal 11 (Public Facilities).

Implementation:

Based on past development activities in rural areas, the County establishes the following appropriate densities and corresponding levels of services:

PLAN DESIGNATION	Min. Allowable Lot Size	Is a Community Sewer System Appropriate?	Is a Community Water System Appropriate?
Rural Areas	1 acre (R-1) 5 acre (R-5)	No No	Yes No
Non Resource Lands	20 acre (NR)	No	No

NOTE: A "yes" indicates that the proposed development of a community water (or sewer) system is appropriate and no plan amendment is required.

A "No" indicates that the proposed development of a community water (or sewer) system may be appropriate and that a plan amendment may be required prior to approval of the development and an exception to Goal 11 and Goal 14 may be required.

The requirements of Goal 11 are further implemented in our LDC. Article 74 provides standards for water, sewer, drainage, fire protection, roads and electrical services in rural areas. Said Article provides that subdivisions in rural areas may utilize either a central water supply system or individual wells, and individual septic systems and that development shall meet the drainage, fire, service road and electrical service standards established by the code.

In comparing the provision of those services to the subject property, we find that fire protection is provided by Fire District No. 1 which has a station and equipment located 5 miles from the subject property. We find that the subject property, and the Wocus area in general, is served by a network of state and county highways. The Klamath County Public Works Department has determined that Shady Pine Road has the capacity to carry the increased traffic which may be generated by the single family residences on the subject property without any adverse impact. The provision for onsite sewage disposal systems is consistent with the rural area service standards established by Article 74 of Klamath County's Land Development Code. As the soil

types and topography of the Wocus and Cove Point Areas are essentially identical to those of the subject property, it is reasonable to expect that the subject property will have no problems with onsite septic disposal. As the land development code requires approval of onsite septic disposal systems prior to the subdivision of the property, the adequacy of those systems will be assured prior to the development of this property.

For large lot rural uses, such as the type proposed in this application, the County has determined it appropriate to utilize either central water supply systems or individual wells at the option of the developer. The information provided by the developer and included in the record demonstrates that the use of individual wells by other residences in similar areas is successful and the developer will utilize that manner of providing water service to the property.

The subject property is supplied power by Pacific Power & Light and telephone service by US West. The property lies within the City School District boundary and the schools can adequately accommodate any students who may reside on the property.

It is important to note that prior to approving any partition or subdivision of the subject property, the review authority must find that the proposed division is in conformance with the County's Comprehensive plan. The zoning of the subject property does not automatically allow the division of the property. In the event that the development of the property cannot be accomplished with rural level services and without impacting public service, the review authority must either deny the request or take exceptions to any applicable land use goals and policies.

We find that the proposed development of the subject property for rural residential use is consistent with Goal 11.

(6) Goal 14 - Urbanization. Goal 14 is intended to provide for the orderly and efficient transition from rural to urban land use. We find that the subject application is consistent with the requirements of Goal 14. As provided in Section 51.004 of Klamath County's Land Development Code, the purpose of the rural R-1 Zone is to provide areas for rural residential living styles which may include limited agricultural activities such as maintaining a horse or a small number of livestock. Rural residential development is appropriate in areas that do not have an expectation or history of subsurface sewage problems, water problems or other natural limitations. It is also appropriate for rural land that has little or no resource value. The land, because of its elevation and topography, is generally not suitable for agricultural use. It is physically separated and buffered from resource uses in the general area. It is border by other R-1 zoning and is near the rural residential areas of Wocus and Algoma.

It is an area which has, as described above, appropriate public and private facilities. The nearby rural residential areas demonstrate that this area and the subject property do not require urban level services such as community water and sewer systems, but can be developed successfully with rural level services. Those services which the County deems important or necessary for rural development are already existing in this area and are of adequate size to accommodate the level of services and demands for services that the development of this property will add.

The large size of these lots will further enhance the ability of



the land to accommodate rural residential development and demonstrates that the density of the development on this land is not at urban levels. The development of this property at that level will not result in the conversion of rural land to an urban use.

B. The proposed change is in conformance with policies of the Klamath County Comprehensive Plan. The subject application has been submitted to review by the Klamath County Planning Department staff. Said staff has reviewed the proposed use against the policies contained in Klamath County's Comprehensive Plan and finds that the proposed plan change is in conformance with the review criteria. The comprehensive plan policies adopted by the County are intended to further the requirements of the state land use goals. The policies for goals 1, 2, 3, 4, 5, 10, 11, and 14 are congruent with the findings made hereinabove.

As is described and found hereinabove, this rural area is well suited for rural residential use, is well received by the public and is a desirable location for rural residential development.

It is appropriate to plan and zone this property for Rural Residential Use because it contains the public and private services which the County deems necessary and those services can accommodate this growth without any adverse effect.

Policy 13 under Goal 11 requires that new subdivisions in rural areas will only be approved where appropriate public and private services at levels capable of adequately serving the new development are provided. As explained and found above, those services are available or can be appropriately provided on site by the developer as the property is platted.

**ZONE CHANGE REVIEW CRITERIA: FINDINGS AND CONCLUSION**

Our findings of fact and conclusions of law concerning the zone change review criteria are as follows:

A. The proposed change of zone from NR to R-1 is in conformance with the comprehensive plan and all other provisions of the land development code. The relevant comprehensive plan findings and policies and many of the land development code requirements are discussed hereinabove. For rural residential use, Article 74 sets out the service standards for water and sewer service and also incorporates by reference, drainage, fire protection, road standards and electrical service requirements. Any subdivision plat must demonstrate compliance with those standards. If the property cannot be developed with rural level service, an exception to goals 11 and 14 will be required prior to approval of the division of the property.

We find that based on the evidence in the record and the findings contained in this order that the land development code requirements have been met.

B. The property affected by the change of zone is adequate in size and shape to facilitate the uses that are allowed in conjunction with such zoning. The property is 50 acres in size. The applicant has submitted a rough preliminary development plan which shows the layout of 15 lots on the northerly 20 acres of the parcel and the attendant roads on the property. The information in the records concerning wells and septic systems and the SCS maps showing that the soils and topography of the subject property are similar to that of the nearby land demonstrates that the property is suitable for the rural

residential uses allowed by the R-1 zone. Any more intensive use requires a conditional use permit and a further review of the plan and code requirements.

C. The property affected by the proposed change of zone is properly related to streets to adequately serve the type of traffic generated by such uses that may be permitted therein. The Klamath County Public Works Director has determined that the County roads which service the subject property have the capacity to carry the increased traffic which would be generated by the addition of the single family residences on the subject property. The subject property is accessed via a county road and state highway. The property has good access and will be properly served by the existing streets and roads.

D. The proposed change of zone will have no adverse affect on appropriate use and development of abutting properties. As found hereinabove, the subject property lies adjacent to other rural residential development. There are no resource uses on any of the abutting or adjacent properties and this general area is physically separated from any resource uses. There have been no objections to the subject application except those raised by the DLCD. Those objections were not that an adverse affect would result, but rather that rural land was being converted to urban use. All of the evidence in the record supports the use of the property for rural residential development. There is no indication whatsoever that there will be any adverse affect on any adjacent or abutting properties or the appropriate uses of those properties.

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## CONCLUSION AND ORDER

The Board of Commissioners finds that the Applicant has satisfied the pertinent review criteria as set out in Articles 47 and 48 of Klamath County's Land Development Code. Correct notice was given and the intent of statewide planning program has been met. The Board of Commissioners hereby approves the subject request for CLUP and zone change from Non-Resource/NR to Rural R-1.

Dated this 10th day of July, 1991

Harry H. Hurd  
Chairman of the Board

Edwin H. Hurd  
Commissioner

MA  
Commissioner

Approved to as to form and content:

Reginald R. Davis  
Reginald R. Davis, County Counsel

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 12th day  
of July A.D., 19 91 at 10:13 o'clock A M., and duly recorded in Vol. M91  
of Deeds on Page 13611

FEE none

Evelyn Biehn, County Clerk

By Antonia M. M. M. M.

Return: Commissioners Journal