

BEFORE THE BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGONIN THE MATTER OF CLUP/ZC 2-92
FOR AHERN TRUSTORDER1. NATURE OF THE APPLICATION.

A hearing on this application was held before the Board of County Commissioners August 25, 1992 with the Planning Commission in an advisory role. The applicant is requesting a CLUP/ZC from RURAL/R-5 to TRANSPORTATION COMMERCIAL/CT on 8.2 acres located adjacent to the Klamath Falls-Malin Highway (State Highway 39), west and north of the City of Merrill.

This application was reviewed pursuant to Articles 47 and 48 of the Klamath County Land Development Code.

2. NAMES OF THOSE INVOLVED.

The Ahern Trust was represented by Karla J. Knieps of Giacomini & Knieps, 706 Main Street, Klamath Falls, Oregon, attorneys for the Ahern Trust. Representatives of the Ahern Trust in the audience were Madge Ahern and Katherine (Ahern) Holl. John Lund, Registered Professional Engineer, gave testimony on behalf of Applicant. The Planning Department was represented by Kim Lundahl, Senior Planner and Carl Shuck, Planning Director. The recording Secretary was Karen Burg, Administrative Secretary. The Department of Transportation was represented by Mark DeVoney. Rod Davis,

County Counsel was present. Members of the Board of County Commissioners who participated in this hearing were: Harry Fredricks, Ed Kentner and Wes Sine. The County Planning Commission, with a quorum present, participated in an advisory manner. Members of the Planning Commission present were: Don McCasland, Chair; John Kite, Vice-Chair; John Browning, Doug Everett, Ned Livingston, John Monfore, Hal Pierce.

3. LEGAL DESCRIPTION.

8.2 acres in Section 2, T. 41 S., R. 10 E.W.M., Klamath County, Oregon. TA R 4110-00200-0800-000.

4. RELEVANT FACTS.

The applicant has requested a change in land use designation from rural to commercial and zone change from R-5 to CT on 8.2 acres located west of Highway 39 and the Merrill City limits within the Merrill urban growth boundary.

The supporting documentation included a report by John Lund, Registered Professional Engineer; a legal description for the zone change line prepared by Truline Surveying, Dennis Ensor, Registered Professional Land Surveyor; photographs submitted as an exhibit to the Staff Report, photographs submitted by John Lund; a sketch by John Lund of the proposed access points and distances between them; assessor's maps submitted by Applicant's attorney and as an exhibit to the Staff Report; a map of the Merrill Urban Growth boundary submitted by Applicant's attorney.

5. AUTHORITIES: Articles 47 and 48 of the Land Development Code.

5.1 Article 47 - Change of Zone Designation: A proposed change of zone shall be approved if the reviewing authority finds that:

A. The change of zone is in conformance with the Comprehensive Plan, and all provisions of the Land Development Code. The Board has found the proposed change consistent with the aforesaid applicable Plan and Code zone provisions.

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. The property is 8.2 acres. It abuts property already designated CT which fronts Highway 39. Applicants are requesting to market the property for sale and lease to businesses which meet CT zone permitted uses and would be subject to site plan approval.

C. The proposed zone change will have no adverse effect on the appropriate use and development of abutting properties. No objections were filed or heard by adjacent landowners who received the required notice. The property is located within the Merrill Urban Growth boundary. The property in question will add an additional 8.2 acre strip of transportation commercial property to transportation commercial property already existing along Highway 39. It would result in a greater depth of commercial zoning west from the highway frontage. The proposed boundary line of the 8.2 acres follows an existing irrigation ditch. Testimony from John Lund indicated that (1) the property is surrounded by commercial property on three sides and development exists on the east side of Highway 39; (2) there are no homes located on the proposed parcel nor on the 16.8 acres on the other remaining parcel owned by Applicant; (3) a drainage ditch bisects the property; (4) the 8.2 acre section proposed for CT could not be irrigated along the west side without flooding

the already existing CT property between it and Highway 39; and (5) the property is within the Merrill Urban Growth boundary.

D. The property affected by the zone change is properly related to streets to adequately serve the needs of traffic generated by such uses. The property affected by the proposed zone change is adjacent to Merrill-Malin Highway (State Highway 39). Access to the property would be from Highway 39 via access roads proposed by Applicant; one at the location of a presently existing gate approximately two hundred (200') feet south of northerly (Boyd) property line, and one opposite Second Street in Merrill. Testimony from John Lund was that traffic from the proposed access points would have minimal impact on the Merrill-Malin Highway and associated traffic. The Oregon Department of Transportation initially filed an objection based on OAR 660-12-060 and the 1991 Highway Plan Access Management Policy. Applicant's attorney argued that OAR 660-12-060 defines "urban" land as land within an urban growth boundary. Since this land is within an urban growth boundary, the Access Management Policy B of the 1991 Oregon Highway Plan (Table 1) requires only five hundred (500) feet spacing when there is a private drive if Highway 39 is appropriately classified as a "limited control" highway and only three hundred (300) feet if it is appropriately classified as a "partial control" highway, rather than the twelve hundred (1,200) feet private drive distance set out in the Department of Transportation objection. Applicant's counsel also argued that the land adjacent to the highway is already zoned CT and this parcel is merely a triangular piece located behind property that is already zoned CT. John Lund also introduced a

sketch he drew showing that there was more than 500 feet between each of the proposed access sites. After hearing Mr. Lund's and Applicant's counsel's report and testimony and reviewing the exhibits, the representative of the Department of Transportation, Mark DeVoney, indicated he would not take a position either for or against the application. Mr. DeVoney concurred that if there were seventy-five to one hundred vehicles per day as estimated by John Lund, it would not have a significant impact. Therefore, the Board finds that the impact to Highway 39 and associated traffic will be minimal.

5.2 Article 48 - Change of Land Use Plan: A proposed change of Land Use Plan shall be approved if the reviewing authority finds that: The proposed change is in compliance with Statewide Planning Goals and Administrative Rules, and is in conformance with all policies of the Klamath County Comprehensive Plan.

A. An initial objection by the Department of Land Conservation Development was filed on April 13, 1992, with the Planning Department on the basis that the proposed change violated OAR 660-04-108. The DLCDC's objection was subsequently withdrawn after Applicant's attorney reviewed the application with Ronald Eber of the DLCDC. Mr. Eber advised the Planning staff that he was unaware, at the time of his objection, that the property was within the Merrill Urban Growth Boundary. Since it is, OAR 660-04-018 is inapplicable. The only goals reasonably

affected by the proposal are Goal 9 - "Economic Development" and Goal 12 - "Transportation".¹ The proposal is consistent with the objectives of Goal 9, according to testimony of the Applicant's attorney, by providing a potential location for new retail and commercial business permitted in a CT zone, such as sales, services and light wholesaling, with the potential distribution of goods to Merrill, Malin and Tulelake; with the corresponding potential to increase jobs, bring in new revenues, and contribute to the development of the Merrill area. The concerns raised by the Department of Transportation regarding Goal 12 (levels of traffic and access) were addressed by John Lund's testimony which indicated such impact would be minimal.

The Board, therefore, finds based on the Staff Reports and presentation, exhibits, the testimony of Applicant's attorney and engineer John Lund, that the conversion of the 8.2 to another non-resource designation is consistent with the aforementioned goals; that the change in Plan and Zone designation is supported

¹ The property is treeless open pasture with no dwellings, improvements or resources; it is not located in any area of known natural disaster or hazard. Goal 3 is not applicable since the property is within the Merrill Urban Growth boundary. There was no evidence of any adverse impact to air, water or land quality. Recreational uses are a CUP permitted use, but none are planned at this time. Public Services and facilities can be easily made available from Merrill; fire protection is supplied by Merrill Rural Fire District. Well water and septic are projected. Adequate housing sites are available in R5 zones adjacent to this parcel, and on the other side of Highway 39 and across Falvey Road.

by the record, exhibits and testimony; that the use of the property is consistent with the already existing commercial transportation zoning in the adjacent properties, adds appropriate depth to the property adjacent to it already zoned commercial transportation; provides a good planning buffer for surrounding uses; and is an appropriate use of the site given the location within the Merrill Urban Growth boundary, the size of the parcel, the surrounding commercial transportation zones, and the location of the irrigation ditch which provides a natural division between the proposed CT property and the R5 property to the southwest.

6. CONCLUSIONS AND ORDER.

The Board of County Commissioners finds the Applicant has satisfied the pertinent review criteria as set out in Oregon Administrative Rules and Articles 47 and 48 of the Code. Correct notice was given and the intent of the statewide planning program has been met.

Therefore, it is ordered the request for CLUP/ZC 2-92 is approved for a Change in the Land Use from RURAL to COMMERCIAL TRANSPORTATION and a zone change from R-5 to CT.

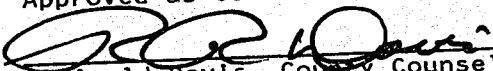
Dated this 15th day of October, 1992.

Chairman of the Board

Nancy J. Fredrick
Commissioner

David A. Kestner
Commissioner

Approved as to form:


Reginald Davis, County Counsel

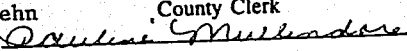
NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Land Use Board of Appeals within twenty-one (21) days following the mailing of this order. Contact the Klamath County Planning Department for information as to how to file this appeal. Failure to do so in a timely manner may affect your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 27th day
of Oct. A.D., 19 92 at 9:11 o'clock A.M., and duly recorded in Vol. M92
of _____ Deeds on Page 25136
Evelyn Biehn, County Clerk

FEE none

By 

Return: Commissioners Journal