

BEFORE THE BOARD OF COMMISSIONERS  
KLAMATH COUNTY, OREGONIN THE MATTER OF CLUP/ZC 3-93  
FOR ABNER/KINNEY

## ORDER

1. NATURE OF THE APPLICATION

Hearings on this application were held before the Board of County Commissioners MAY 25, 1993 and JUNE 22, 1993, with the Planning Commission in an advisory role. The applicant is requesting a CLUP/ZC from AGRICULTURE/EFU-C to RURAL/R-5 on 79 acres to allow a subdivision into 14 lots (Tract 1280) of property located east of Klamath Falls in the Pine Grove area.

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

2. NAMES OF THOSE INVOLVED

The applicant was represented by Doug Adkins. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Karen Burg. Members of the Board of County Commissioners who participated in this hearing were: Wes Sine and F. Jean Elzner. The Planning Commission, with a quorum present, participated in an advisory manner. Opposition testimony was entered in writing and verbally. A list of those participating is included in the Planning Department file for this application.

3. LOCATION

Portions of the S 1/2 of the SE 1/4 Section 9, T 39S R 10E W.M.. Generally located, north of Hwy 140, east of the "second" Pine Grove Rd., and west of Olene. T.A. 3910-9-1000, 1100 & 1101.

4. RELEVANT FACTS

The applicant requested a CLUP/ZC from AGRICULTURE/EFU-C to RURAL/R-5 on 79 acres on the east side of Pine Grove. The plan/zone designation to the south is AGRICULTURE/EFU-C, to the north, east and west is RURAL/R-1. The property is an "island" bounded by rural development and man-made features

such as a highway separating it from established agricultural uses to the south.

The applicant has submitted an exceptions statement outlining the characteristics of the property, soil type and agricultural productivity, agricultural products, the community, development history, etc.. This document (Exhibit "C") is attached hereto and incorporated in this order.

Applications for changes to land use plan (CLUP) and zone changes (ZC) are reviewed pursuant to Articles 47 and 48 of the Code.

#### 5. EXCEPTIONS STATEMENT

As this is a request involving "Resource Lands" an exceptions statement was required of the applicant. This exceptions statement should be considered for conformance with OAR 660-04-028, Exception Requirements for Land Irrevocably Committed to Other Uses. The adequacy of this document was considered and findings developed in support of the document previous to consideration of the request per Articles 47 and 48.

OAR 660-04-028(6) sets out mandatory findings that must be considered.

a. existing adjacent uses:

north- rural use

south- agricultural use, 1/2 mile south across Hwy 140 E

east- rural use

west- rural use

b. existing public facilities and services:

Public facility and service districts have been made aware of this request. The Pine Grove Irrigation District, through testimony entered by the applicants representative, indicated that water, to a level required for agricultural use, could not be mechanically supplied to the subject property.

c. parcel size and ownership patterns of the exception area and adjacent lands:

This property is located north of Hwy 140 E east of Pine Grove Rd. The properties to the north, west and east are zoned/divided into rural lots,

the same, or smaller, than proposed by the applicant for the project property.

d. neighborhood and regional characteristics:

Rural use is the predominant land use pattern.

e. natural or man-made impediments separating the exception area from adjacent resource land.

The exception area is isolated from the commercial agricultural operations by the existing adjacent rural uses and a county right of way. This remnant parcel is not suited to agricultural use due to its location and proximity to conflicting uses with agriculture.

Testimony was received concerning the availability of water in the immediate area. It was argued by adjacent property owners that the drilling of 14 additional wells into the same aquifer would have a negative impact on water availability.

The applicants representative presented testimony and exhibits indicating the number of existing wells, location, depth and production. Although water is not found not available in agricultural quantities, the Board found the evidence compelling that domestic needs can be met with the available sub surface supply.

The Department of Land Conservation and Development also participated via letter dated April 27, 1993 entered as Exhibit "F". The DLCD asked the applicant to provide information relating to the availability of water for agriculture or for the 14 lots proposed within preliminary Tract 1280.

As stated before, the applicants representative/engineer submitted records of well logs (Ex. "O"), a geographic well inventory (Ex. "N"), a map showing the depths of existing wells (Ex. "P") and a letter from a soil scientist (Ex. "Q") in response to the concerns expressed.

The Board finds the applicants documentation accurately reflects the planning considerations and facts pertaining to the proposed exception area, a recommendation of approval for this "exceptions statement" is warranted.

**6. ARTICLE 48-CHANGE OF LAND USE PLAN:**

A proposed Change of Comprehensive Plan Designation shall be approved if the reviewing authority finds that:

- a. the proposed change is in compliance with the Statewide Planning Goals,
- b. the proposed change is in conformance with all policies of the Klamath County Comprehensive Plan:

The most affected local/state policy/Goal is that relating to "Agricultural Lands," Goal 3 of the planning program. Applicant indicates this application will not conflict with this goal as the conversion of agricultural lands is not at issue as the exception area is not agriculturally viable due to its proximity to existing conflicting rural uses and the lack of a sufficient supply of water necessary to engage in commercial agriculture either from subsurface sources or from area irrigation districts.

**7. 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;

As the applicants "Exceptions Statement" and request for a change in the Land Use Plan designation are approved the requested zone change from EFU-C to R-5 will be in conformance.

- 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 applicant has submitted a preliminary tract (1280) conceptually detailing the proposed rural use, a 14 lot subdivision. The applicants preliminary

tract, subject to review per Article 46, demonstrates the requested zoning is practical when applied to the subject property.

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 subject property will be accessed via an improved and paved county road (Pine Grove Rd.) north from Hwy 140 E.

The provided access has been reviewed through subdivision review May 11, 1993.

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

The proposed use is an extension/in fill of the existing land use pattern to the east and north. Accordingly, as an extension/in fill there will not be an adverse impact.

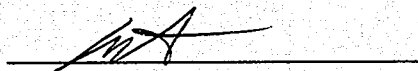
#### 8. CONCLUSIONS AND ORDER

The Board of County Commissioners finds the applicant has satisfied the pertinent review criteria as set out in OAR 660-04-028(6) and Articles 47 and 48 of the Code. Correct notice was given and the intent of the statewide planning program has been met.

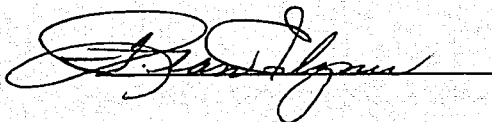
Therefore, it is ordered the request for CLUP/ZC 3-93 is approved for  
ABNER/KINNEY from AGRICULTURE to RURAL and EFU-C to R-5.

DATED this 6 day of JULY, 1993

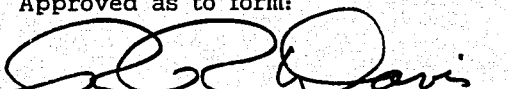
Commissioner



Commissioner



Approved as to form:

  
Reginald R. 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 21 days following the mailing of this order. Contact the Klamath County Planning Department for information as how to file this appeal. Failure to do so in a timely manner may affect your right to appeal this decision.

BEFORE THE PLANNING COMMISSION  
KLAMATH COUNTY

IN THE MATTER OF TRACT 1280  
FOR ABNER/KINNEY

APPLICATION

The applicant requested approval of a subdivision application depicting the division of 79 acres into 14 lots. A hearing was held by the Planning Commission on JUNE 22, 1993. This application was reviewed for conformance with Article 46 of the Klamath County Land Development Code.

THOSE INVOLVED

The applicant was represented by Doug Adkins. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Karen Burg, Administrative Secretary. A quorum of the Planning Commission was present at this hearing. No opposition was offered this application.

LOCATION

East of the "second" Pine Grove Rd., north of Hwy 140, eastern section of Pine Grove, west of Olene located in the S 1/2 SE 1/4 Sec. 9, T 39S R 10E. T.A. 3910-9-1000, 1100 & 1101.

RELEVANT FACTS

The application is for subdivision of 79 acres into 14 lots lying immediately west of the Highlands and Mallory Subdivisions, east of Klamath Falls. The zone/plan designation of the project site is R-5 (CLUP/ZC 3-93) and properties to the north, east and west is R-1/Rural. The properties will have independent water wells and septic systems. Fire protection is provided by Fire District #1. The nearest station is 4 miles to the west of the subject property.


Access will be provided from the Pine Grove Rd. through Lisa Road.

CONCLUSIONS AND ORDER

The Klamath County Planning Commission, based on testimony entered and upon consideration of exhibits a. - e., find the application in conformance with the review criteria set out in Section 46.030 of the Code.

Therefore, it is ordered the application of ABNER/KINNEY for approval of Tract 1280 is granted conditioned upon compliance with the approval letter dated May 11, 1993 and in conformance with applicants exhibit b..

DATED this 6<sup>th</sup> day of July, 1993



Secretary to the Planning Commission

APPEAL RIGHTS

This decision may be appealed to Board of County Commissioners within 7 days following the mailing of this order. Failure to file a notice of appeal within this timeframe may affect your right of appeal.

REQUIREMENTS FOR FINAL APPROVALTract 1280/Abner/Kinney

1. Conformance with Section 46.100 of the Land Development Code.
2. A preliminary title report is to be submitted along with the final plat.
3. Relinquish abutters rights to Pine Grove Road from Lots 1 and 14.
4. Improve Lisa Road to County Standard 114 "Graded Road Rural Area" with 32' top width with 22' wide surfacing 6" deep gravel. Cinders will not be allowed.
5. The road plans must be approved by the County Engineer prior to approval of the final plat.
6. Property to be annexed to Pine Grove/Highlands Special Road District unless developer paves Lisa Drive through the subdivision to a paved County road standard.
7. Fire apparatus access shall meet requirements of Section 10.207 of the Uniform Fire Code which facilitates the rest of the existing development for fire access.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_ the 12th day  
of July A.D., 19 93 at 9:49 o'clock A M., and duly recorded in Vol. M93  
of \_\_\_\_\_ Deeds on Page 16654.

FEE none

Return: Commissioners Journal

Evelyn Biehn County Clerk

By R. A. Kinney

Ex D