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BEFORE THE BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGONIN THE MATTER OF CLUP/ZC 11-94
FOR RAY & OPAL YAGER

ORDER

1. NATURE OF THE APPLICATION

A hearing on this application was held before the Board of County Commissioners JUNE 28, 1994.

The applicant is requesting a CLUP/ZC from COMMERCIAL/CT to RURAL/R-5 on 5.17 acres located east of the Crater Lake Hwy., south of the Fort Creek Resort between Agency Lake and Fort Klamath.

The applicants intend to establish a single family residence on the property. This application was reviewed pursuant to Articles 47 and 48 of the Klamath County Land Development Code.

2. NAMES OF THOSE INVOLVED

The applicants appeared and presented testimony in behalf of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Karen Bury, Administrative Secretary. Members of the Board of County Commissioners who participated in this hearing were: Wes Sine and Ed Kentner. The County Planning Commission, with a quorum present, participated in an advisory manner. No one appeared in writing or in person opposing this application.

3. LOCATION

The site considered in this application is 5.17 acres described as parcel 3, LP 39-90, located east of the Crater Lake Hwy (Hwy 62). T.A. 3307-V26-600.

4. RELEVANT FACTS

The applicant has requested a CLUP/ZC from COMMERCIAL/CT to RURAL/R-5 on 5.17 acres on Fort Creek. The property was planned/zoned to the existing commercial designation as an "exception area" recognized as an on

going commercial use by virtue of the long established Fort Creek Resort. The property under consideration was within the original Fort Creek Resort ownership.

To the immediate north parcel 2, LP 33-90) the zoning is CT, in all other directions the zoning is EFUR-G.

5. GOAL EXCEPTION

This is an application for a plan/zone amendment within an existing exception area outside any Urban Growth Boundary. The change requested is from one non-resource zone to another so an "exception statement" is not required.

The record developed for this application demonstrates the use proposed (a single family residence) is suitable for this location on this property as rural uses not requiring the infrastructure support afforded by location within an UGB such as municipal water, sewer, fire and police protection are found appropriate.

6. ARTICLE 48-CHANGE OF LAND USE PLAN: Conclusions and Findings:

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

A proposed Change of Comprehensive Plan Designation shall be approved if the reviewing authority finds that the application meets all applicable review criteria set out in Section 48.030 of the Code as follows:

1. The proposed change is supported by specific studies or other factual information which documents the public need for the change;

The applicant offered testimony concerning the need for additional rural properties with good highway access between Agency Lake and Fort Klamath.

The Board finds the applicants testimony and corroboration by the Staff and the Planning Commission compelling.

2. & 3. The proposed change complies with policies of the Comprehensive Plan and the Oregon Statewide Planning Goals and Administrative Rules;

The current COMMERCIAL/CT plan/zone was delineated as an "exceptions area" approved through the Acknowledgment process in 1985.

The application before the Board is for a less intense use and finds the change requested beneficial and in compliance. The Board finds the change in plan designation is supported by the record, exhibits, and testimony in that the use of the property as a rural residence would be an appropriate use of the site, given the size, location, aspect, necessity, and surrounding land use. The Board finds the above criteria, 1 - 3, are satisfied as set out.

7. ARTICLE 47-CHANGE OF ZONE DESIGNATION: Conclusions and Findings;

A proposed change of zone shall be approved if the review authority finds that the application meets all review criteria set out in Section 47.030 of the Code:

1. The proposed change of zone designation is in conformance with the Comprehensive Plan and does not afford special privileges to an individual property owner not available to the general public or outside the overall public interest for the change;

As the Board has found the proposed plan change consistent with state/local guidelines/policies the request in change to an implementing zone of R-1 is consistent. The Board finds the property owners of Klamath County may avail themselves of this application process upon initiation of the required process. The applicant has demonstrated a public need for the proposed project, a rural residence, in this area through testimony and corroboration of the Staff and Planning Commission.

2. 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 uses proposed by the applicants, rural residential, are consistent with the proposed zoning designation, R-5.

3. 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 site is adjacent to improved/maintained/paved roads connecting Modoc Point to Crater Lake. The property derives direct access from Hwy 62 and neither the Oregon Department of Transportation or Klamath County Public Works Dept. has responded to this application.

The Board finds additional traffic above the present level appropriate to the use will not be generated on the Crater Lake Hwy..

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

The Board finds property and surrounding land uses are developed or proposed for rural use adjacent to the east, west, and south. The conversion of the subject property to a rural plan/zone is found to be consistent with the existing/surrounding land use of the area as set out in applicants testimony and corroborated by the Staff and Planning Commission.

The Board finds the above criteria 1-4, are satisfied as set out.

8. ORDER

The Board of County Commissioners finds based on testimony received, and exhibits a-c, 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.

The Board notes a response from the Department of Land Conservation and Development HAS NOT been received.

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Therefore, it is ordered the request for CLUP/ZC 11-94 is approved for a
Change in the Land Use Plan from COMMERCIAL to RURAL and a Zone Change
from CT to R-5.

DATED this 5th day of July, 1994

Commissioner

[Signature]

Commissioner

[Signature]
Commissioner

[Signature]

Approved as to form

[Signature]
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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of _____ July

A.D., 19 94

at _____
Deeds

_____ at _____
2:03

o'clock

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M., and duly recorded in Vol. _____

the _____

7th

day

on Page _____

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County Clerk

M94

Evelyn Biehn

By _____

County Clerk

[Signature]

FEE none

Commissioners Journal