

BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGON

IN THE MATTER OF CLUP/ZC 5-96
FOR ROBERT AND CHARLEE BENNETT

ORDER

1. NATURE OF THE APPLICATION: The applicant is requesting a Comprehensive Land Use Plan and Zone Change (CLUP/ZC) from FORESTRY/FR and AGRICULTURE/EFU-CG to COMMERCIAL/CT on 12.39 acres located east of Hwy 97 at MP 250, south of Chiloquin to facilitate initiation of an auto impound/towing facility.

2. NAMES OF THOSE INVOLVED: A Hearing on this application was conducted JUNE 25, 1996. The applicants, Robert and Charlee Bennett, appeared and entered testimony in behalf of their application. The Planning Department was represented by Kim Lundahl. Members of the Board of County Commissioners who participated in this Hearing were: F. Jean Elzner and Dave Henzel. The County Planning Commission, with a quorum present, participated in an advisory manner. A Notarized list of those who participated is on file at the Planning Department.

3. LOCATION: The subject property is designated 36785 Hwy 97N. It is located in portions of the NW 1/4 NE 1/4 Sec. 9, T 35S R7E.

4. FINDINGS OF FACT:

A. Background Information

The 12.39 acre parcel is generally level terrain and has a single family residence. The subject property is 3 miles from the Chiloquin business district for grocery stores, public and private recreational facilities, auto repair and service, restaurants, telephone and power services. It is within the C/AL RFD Fire Protection District with a fire station being located approximately 3

miles north of the subject property.

Surrounding the subject property are parcels of property zoned EFU-CG and FR. These designations were approved by the Board of Commissioners when the Comprehensive Plan for Klamath County was developed and acknowledged November 25, 1981.

5. HISTORIC USE:

The subject property has not been used for any resource purpose for decades, and has never been used for agricultural purposes. Environmental Health Service Division evaluation of septic suitability for this property was completed in regard to the existing residence.

6. EXCEPTIONS DOCUMENTATION:

As this is a plan/zone change involving resource plan/zones, an EXCEPTIONS STATEMENT WAS required. The Department of Land Conservation and Development (DLCD) reviewed this submitted documentation and offered response dated May 21, 1996.

7. COMPREHENSIVE PLAN CHANGE REVIEW CRITERIA - ARTICLE 48:

Klamath County Land Development Code Section 48.030A sets forth the review criteria for approving a comprehensive land use plan change. The criteria and the applicant's evidence which responds to the criteria are as follows:

A. The public need of this change in the Comprehensive Plan is shown by testimony entered by the Bennetts.

The Board finds there is demonstrated need for an auto impound/towing facility on commercial planned/zoned property as there is not a "domiciled" impound facility between Crescent and Klamath Falls.

B. The proposed change is in compliance with state-wide planning goals. The relevant state-wide planning goals are; Goals 1 - Citizen Involvement, 2 - Land Use Planning, 10 - Housing and 11 - Public facilities and Services.

The subject property was planned and zoned for Resource use at the request of the Citizens Steering Committee in 1981.

Because of its size and proximity to expanding rural/commercial uses, i.e. Indian Gaming Facility, the proposed use as an auto impound/towing facility is found to be of no conflict.

The Board finds a positive impact would be realized by the conversion of the Resource planned zoned property to a defined commercial use (auto impound/towing facility) to be in harmony with the current trend along Hwy 97, expanding rural/residential and commercial development. The state-wide goals of preserving and protecting land uses from conflicting uses are applicable to the subject property. The information set forth hereinabove demonstrates that the change in land use plan for the subject property from FR/EFU-CG to CT, will not decrease the resource land inventory to an appreciable degree.

Goal 11, Public Facilities and Services, is designed to plan for the timely, orderly, and efficient arrangement of public facilities and services. In developing its Comprehensive Land Use Plan, the county studied the existing development of land in the county and the relationship between land development and the need for public facilities and services. Those studies are part of Klamath County's Comprehensive Plan. For Commercial development, the County identified in its comprehensive plan a need for the provision of the following services:

- (1) Road development and maintenance;
- (2) Water and septic services;

- (3) Fire protection; and
- (4) Power, telephone, and other utilities.

In comparing the provision of those services to the subject property, the preliminary plat for the subject property shows the property is DIRECTLY accessed by a maintained State Hwy, Hwy 97.

Water services are provided by well. An individual septic systems is in place. The property is located in the C/AL RFD and a fire station is located 3 miles north of the subject property.

Electrical services and telephone services are provided to the property. Other services available in the general area include public parks, privately owned grocery stores, churches, recreational facilities and other small community services.

C. The proposed change is in conformance with policies of the Klamath County Comprehensive Plan. The subject application and planned use for the property is congruent with the policies for state-wide planning Goals 1, 2, 10 and 11 which are described hereinabove. As described above, this area is well-suited for Commercial use, is well-received by the public, and is a desirable location for the use proposed, an auto impound/tow facility.

The Board finds there is a definite demonstrated need for this type of development. The subject area contains the public and private services which the county deems necessary and services can accommodate the growth that will arise from the development of this property without any adverse effect.

9. ZONE CHANGE REVIEW CRITERIA - ARTICLE 47:

Article 47 of the Klamath County Land Development Code contains the review criteria which must be addressed in approving a change of zone. The criteria and the applicants' evidence of compliance therewith is as follows:

A. The proposed change of zone from EFU-CG/FR to CT is in conformance with the comprehensive plan and all other provision of the Land Development Code. The relevant comprehensive plan, findings and policies are discussed hereinabove. In addition, many of the Land Development Code requirements are also discussed above or demonstrated.

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 12.39 acres in size. The applicant will need to submit a site plan which, prior to initiation will need to be reviewed by the Planning Director via the Site Plan review process.

The information submitted herewith demonstrates that domestic water, fire protection and septic systems and other required utilities are well suited for the development of the subject property. The subject property is adequate in size and shape to facilitate the planned use and the planned use provides a reasonable transition from Resource to Commercial development.

C. The property affected by the proposed change of zone is properly related to a State Hwy to adequately serve the type of traffic generated by such use that may be permitted therein. The proposed preliminary plan submitted by the applicants show the access street proposed for the property. The width and design of the existing access is in compliance with the code. County and state roads which serve the subject property have the capacity to carry the increased traffic which will be generated by the business located on the subject property.

D. The proposed change of zone will have no adverse effect on the appropriate use and development of adjacent properties. As described above, the subject property lies in the hart of an area which is committed to development as non-resource uses. The pattern of development surrounding the subject property is rural residential. The land use to the east significantly denser than that on the subject property. The development of this property will not interfere or impact commercial agriculture and forestry uses. The property is not well suited for either purpose as outlined herein. Property surrounding the subject property is similarly not well suited for agriculture or forestry purposes.

10. OTHER CONSIDERATIONS:

The subject property does not lie within any identified fish or wildlife resource area. The exception site contains no mineral or aggregate resources, historic or cultural values, energy resources, or other resources listed under Goal 5 of the Klamath County Comprehensive Plan. The proposal does not conflict with any natural resource values, and it does not conflict with any air, water, or land resource quality criteria.

The subject property is not in an area subject to natural disaster or hazards and is not required for the recreational needs of the state and its visitors. The development of the property will enhance economic development of Klamath County by increasing the tax base value, providing jobs for the citizens that are here and providing demands for the private retail and commercial interests of the area and Klamath County generally.

11. PLANNING COMMISSION RECOMMENDATION:

The Planning Commission has recommended APPROVAL of this application. The Board sincerely appreciates the Planning Commission effort and involvement with the Planning process. The Board has fully considered the recommendation, Exhibits A-M and testimony entered.

12. CONCLUSION AND ORDER:

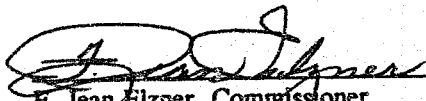
The Board of Commissioners finds the subject property is particularly well suited and sited for the proposed commercial development. The development of the property will meet a demonstrated need for the specified uses.

Proper notice of the application and the hearing was given. The intent of the statewide planning goals have been met.

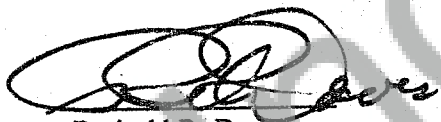
THEREFORE, pursuant to motion made by Dave Henzel and seconded by F. Jean Elzner, it is hereby ordered the change of Comprehensive Land Use Plan designation and zoning of the subject property from FORESTRY/FR and AGRICULTURE/EFU-CG to COMMERCIAL/CT IS APPROVED, subject to:

1. The use allowed by the approval is limited to that proposed by the applicant and justified by the entered "Exception Statement," an auto impound/towing facility and reflected on the official zoning map.

DATED this 14th day of August, 1996.


F. Jean Elzner, Commissioner
for the Board of County Commissioners

Approved as to form:


Reginald R. Davis
County Counsel

NOTICE OF APPEAL RIGHTS

You are hereby notified this decision may be appealed to the Land Use Board of Appeals within 21 days following the date of mailing of this ORDER. Contact the Land Use Board of Appeals for information as how to file this appeal. Failure to do so in a timely manner may affect your right to appeal.

-8-

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 15th day
of August A.D., 19 96 at 10:00 o'clock A.M., and duly recorded in Vol. M96,
of Deeds on Page 25117.

Bernetha G Letsch, County Clerk

By 

FEE No Fee