

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR
KLAMATH COUNTY, OREGON

IN THE MATTER OF AN)
APPLICATION FOR A) Case No. CLUP/ZC 11-97
COMPREHENSIVE PLAN AND ZONE)
CHANGE;) ORDER
APPLICANT - ATLANTIS)
ENTERPRISES FOR A 4-ACRE SITE)
LOCATED AT THE SW CORNER OF)
OLD MIDLAND ROAD AND HIGHWAY)
39S.)
)
)
Defendant.)
_____)

I. NATURE OF THE HEARING

The application in this matter was submitted by Atlantis Enterprises Inc. and was for a comprehensive plan and zone change from general commercial to light industrial. The parcel affected by the request is approximately 4-acres. The request was made to allow agricultural packing and processing to be initiated on the 4-acre site. The issue before the Commissioners was whether the request for a comprehensive plan and zone change was in conformance with Article 47 and 48 of the Klamath County Land Development Code and whether the applicant had met all of the requirements of those Articles. The original hearing was held August 27, 1997. A continued hearing was held on September 30, 1997. The decision of the Board is reflected by this Order.

II. NAMES OF THOSE WHO PARTICIPATED

At the hearing held on August 26, 1997, and the subsequent continuance held on September 30, 1997, Commissioners present were

1. ORDER
atlaen01.024

97 OCT 15 AM 10:05

Al Switzer, Chairman, William R. Garrard and M. Steven West. Michael P. Rudd appeared on behalf of the applicant, Atlantis Enterprises Inc.. Present at the September 30, 1997, hearing were opponents Don and Jacqueline Berry being represented by John R. Hassen and William F. Wilson. Carl Shuck, Klamath County Planning Director and Kim Lundahl, Klamath County Senior Planner, were present on behalf of the Klamath County Planning Department. The recording secretary was Karen Burg. Also present was Klamath County Counsel, Reginald R. Davis.

III. PROPERTY DESCRIPTION AND LOCATION

The subject property is a 4-acre parcel, which is reflected as parcel 3 of the preliminary partition, LP 51-97. The property is located generally on the southwest corner of Old Midland Road and Highway 39 South, more particularly described as the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon. The subject property is outside the urban growth boundary. The property is more commonly known as 11030 Highway 39, Klamath Falls, Oregon.

IV. RELEVANT FACTS

The property in question is currently zoned general commercial and has been zoned as such since 1978. The comprehensive plan and zone change requested is from general commercial to light industrial. The request of the applicant is to allow agricultural packing and processing to be initiated on the 4-acre parcel. The property has been used in the past as the main office for Cantwell Trucking and for the sale of tractors and farming equipment. There

exists upon the property, since 1978, a building with approximately 9,080 square feet and is surrounded by an existing gravel driveway.

There is testimony in the record that the traffic generated by the proposed business would be for 27 employees with an approximate daily traffic flow of 40 cars. One additional security light has been placed outside the building. The septic system upon the property was specially constructed to accommodate the high water table in the area and is of large capacity to allow for additional commercial ventures to use the system. Water for the subject area is a well with adequate water supply. The majority of the waste water for the property will be shipped to California for disposal and will not be dumped into the existing septic system. The applicant testified that there was a current OSHA inspection of the operation and that the noise created from the fans is minimal and within OSHA regulations. There will be minimal air pollution due to screening mechanisms in place at the facility.

Furthermore, the opponents of the project live more than 1,000 feet to the north of the proposed 4-acre parcel and across Old Midland Road. Such a buffer zone would minimize any adverse impact upon the surrounding property owners. Indeed, the closest property owners, including Mr. Terry Richards via his letter, testified that he is the closest residence to the north of the area being considered for the zone change, that he does not consider their yard lights any different from other local farms and also testified that their operation is clean, quiet and non-intrusive. The opponents, in a letter to the Board of County Commissioners dated

September 13, 1997, listed under their criteria of "not an issue" that "the current tenant (Atlantis) is a 'benign' industry". The majority of the testimony from opponents was directed towards the commercial zoning of the 23 acres of property rather than the potential light industrial zoning on the 4-acre parcel.

The Fairclos, by and through Susan Fairclo House, testified that the Fairclos have owned the property for four generations and previously had tractor sales and trucking companies located in the existing building. The well is 1,500 feet deep and has a productive flow for more than one commercial venture. The septic system has a new pump. All property in which the septic system is located is deeded to the Fairclo family. The capacity of the septic system is more than adequate and was designed for more than one commercial venture. In addition, the high water table was taken into consideration when the septic system was developed and was designed to ensure no adverse impacts upon surrounding properties. Further testimony from the closest neighbor, Mr. Richard, indicates that no odor emanates from the building.

A buffer zone between the existing structure and the neighbors across Old Midland Road is over 17 acres and 1,000 feet in distance. The building has been in existence since 1978 and, by having the building occupied by Atlantis Enterprises Inc., the surrounding property is much cleaner and more aesthetically pleasing than if the building was to remain vacant. At the current zone designation, a commercial venture such as automobile repairs, sales and service, agricultural supplies and services, fleet

storage and mini storage can be placed upon the property. The light industrial zone will allow for agricultural packaging and processing which is in conformance with the agricultural setting of the surrounding property. Testimony requested that a light industrial overlay be placed upon the property restricting its light industrial use to only agricultural packing and processing.

The County Commissioners felt the testimony of supporters of the application to be credible and specific. The opponent's testimony of adverse impacts upon surrounding property owners was less specific and general in nature. Testimony from the Fairclo family, neighbors close to the project and people in the agricultural industry support the project. The number of opponents located across Old Midland Road, while expressing concerns, did not offer specific testimony of any adverse impact being created by the applicant.

V. RELEVANT CRITERIA

1. **Comprehensive Plan Designation.** The application for the change and land use designation from general commercial to light industrial requires a comprehensive plan and a zone change. The request is to be reviewed per Article 47 and Article 48 of the Klamath County Land Development Code. Article 48, for the Comprehensive Plan change shall be reviewed against three criteria.

The first is that the proposed change be supported by specific studies or other factual information which documents the public need for the change. At the current time, there are vacant industrial lands within Klamath County. However, such vacant

5. ORDER

atlaen01.024

industrial acres do not contain structures in which Atlantis Enterprises Inc. could commence production in the near future. A building would need to be erected. The current location is within a general rural and farm area, the produce of which is packaged by the applicant. The location provides a building for Atlantis Enterprises Inc. with adequate facilities and the ability to commence production in the near future. The vacant industrial lands in the County would be cost prohibitive for the applicant to bring business to the community. Additionally, there is creditable testimony in the record justifying a public need for such a business in the community. Currently, for the agricultural packaging and processing, most produce is shipped out of the County and, indeed, out of State. The location of this parcel allows for transportation, utility services and convenience as opposed to other parcels in the County zoned Light Industrial. The need for the Comprehensive Plan change is substantiated by credible testimony which justifies the need for the change. This application brings a new business to the community which, without the comprehensive plan change, would be unavailable to the community.

The second criteria for the comprehensive plan designation is that the proposed change complies with policies of the Comprehensive Plan. Statewide Planning Goals 1, 2 and 9 and the Klamath County Comprehensive Plan supports this application. Goal 9 of the Klamath County Comprehensive Plan is to improve and diversify the County economy with new industry. Policy number 5 of

6. ORDER

atlaen01.024

Goal 9 states that the County shall encourage the development of agricultural processing plants in the community. Policy 7 of Goal 9 states that the County shall encourage the development of local markets for agricultural produce. The applicant fulfills these goals and is in compliance with the Comprehensive Plan.

Finally, criteria 3 for a comprehensive plan designation change requires that the proposed change complies with the Oregon Statewide Planning Goal and Administrative Rules. As indicated in the previous paragraph, Statewide Planning Goals 1, 2 and 9 are supportive of the applicant. There is substantial and credible evidence in the record to support the comprehensive plan designation change.

2. Zone Change. In order to allow for a change of zone designation, five criteria must be met. First, the proposed change of zone 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 indicated above, this industry is in conformance and supports the Comprehensive Plan. The property is currently zoned general commercial and a change to light industrial to allow for agricultural packaging and processing is a minimal and a very low impact change, which does not afford special privileges to the individual property owner. Additionally, a contingency of this Order is that a light industrial overlay zone be established so that the only light industrial activity which can occur upon the property is that of agricultural packing and processing. Such an

overlay ensures that there are no additional adverse impacts upon surrounding property owners and is more restrictive on the property owner than leaving the current General Commercial zoning. Indeed, the overlay severely restricts the property owners rights rather than affording the owners a special privilege by restricting the use of the property to one use as compared to the approximate 26 uses allowed in a General Commercial zone designation.

The second criteria for the change of zone designation is that the property affected by the change of zone designation is adequate in size and shape to facilitate any uses allowed in conjunction with such zoning. As indicated, the overlay zone ensures that the only business to be used upon the property is agricultural packaging and processing. The property is approximately 4-acres in size and is adequate in size and shape to support the zone change.

The third criteria for the zone designation change is that the property affected by the proposed change is properly related to streets and roads, other public facilities and infrastructure to accurately serve the types of uses allowed in conjunction with such zoning. The only industry which needs to be examined for adequate facilities is for the agricultural packaging and processing. The ample testimony in the record as to waste water disposal, septic system construction and design, access permit from the Oregon Department of Transportation and the requirement of the applicant to submit to a site plan review per Article 41 of the Klamath County Land Development Code meets this criteria.

The fourth criteria for the zone designation change is that

8. ORDER

atlaen01.024

the change will have no significant adverse affect on the appropriate use and development of adjacent properties. As indicated, the industry will have minimal effect, and indeed no significate affect upon any of the surrounding properties. The opponents themselves classify the business as a benign business and the ample testimony as to noise, odor, light, sewer, water and potential traffic pollution in the area is satisfactory to the Commissioners to support such a conclusion. The Commissioners find that the testimony given by supporters for the application, and the applicant themselves, to be credible and specific as to the effects the business will have upon the surrounding properties. The surrounding properties may be used and developed accordingly with no impact from the subject property being created. Opponent's testimony as to the adverse impacts upon their properties are not supported by objective evidence and are general in nature.

Finally, the fifth requirement for the zone designation change requires that the proposed change be supported by specific studies or other factual information which documents the need for the change. Such criteria was examined above in the comprehensive plan designation change criteria. The Board concludes there is creditable factual information and testimony in the record which justifies and documents the need for the change in the community and upon the individual parcel. While there exists other industrial land available in the County, such land is vacant and in a poor location for this project. The subject parcel is adequate and ideal for transportation and utility services needed for the

9. ORDER

atlaen01.024

operation. While there is other Light Industrial zoned property in the community, it is simply in the wrong location.

VI. CONCLUSION

A. The property is currently zoned general commercial and has been used in the past for commercial ventures. The change to light industrial with the special use overlay will protect neighbors and the property from other industrial uses.

B. The proposed use has been properly reviewed pursuant to the Klamath County Land Development Code, Articles 47 and 48, and is in conformance with those Articles as well as Goals 1, 2 and 9 of the Klamath County and Statewide Planning Goals. There is substantial, specific and credible testimony in the record to base this conclusion. There will be no significant adverse impact upon the appropriate use and development of adjacent properties.

C. The proposed change is supported by factual information demonstrating the public need for change, that the change complies with the policies of the Comprehensive Plan and that the change complies with the Oregon Statewide Planning Goal and Administrative Rules.

D. In order to ensure no adverse impact of surrounding properties it will be a requirement of this Order that the applicant be required to submit a Site Plan Application per Article 41 of the Klamath County Land Development Code and that there shall be a special use overlay on the light industrial zone prohibiting any light industrial use upon the property other than agricultural packaging and processing.

33897

VII. ORDER

Based upon the findings and conclusions herein, the change and land use designation (CLUP/ZC 11-97) from general commercial to light industrial is approved.

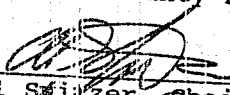
It is further ordered that the zone change be subject to a limited use overlay restricting the use to that proposed, agricultural packaging and processing.

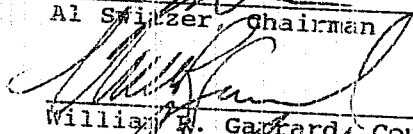
It is further ordered that a Site Plan Application per Article 41 shall be processed prior to the change of occupancy allowed via this approval.

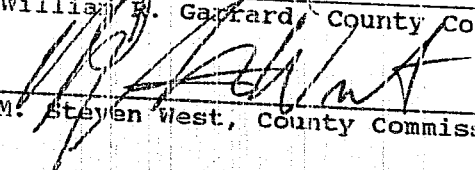
It is further ordered that the applicant's counsel is directed to develop and submit a draft Order within fifteen (15) days from September 30, 1997.

DATED this 14th day of October, 1997.

Klamath County Board of Commissioners

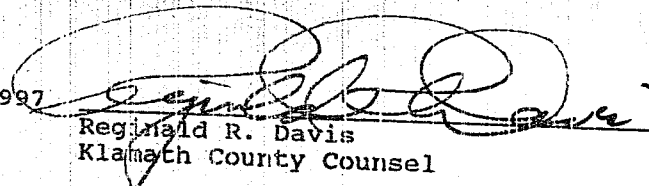

Al Spitzer, Chairman


William R. Garrard, County Commissioner


M. Steven West, County Commissioner

33898

Approved as to Form:

Dated: 9 Oct, 1997
Reginald R. Davis
Klamath 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 date of the decision. Contact the Klamath County Planning Department for more information regarding this procedure. Failure to appeal within the time provided will result in the loss of your right to appeal this decision.

STATE OF OREGON; COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County E.O.C. the 15th day
of October A.D., 19 97 at 11:05 o'clock A. M., and duly recorded in Vol. 1497
of Deeds on Page 33887

FEE

No Fee

By Bernetha G. Letsch, County Clerk
Kiddum Kozal