

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF KLAMATH COUNTY, OREGON**

**IN THE MATTER OF CLUP/ZC 5-99
FOR JERRY SAVAGE**

ORDER

1. NATURE OF THE APPLICATION:

The applicant has requested a CLUP/ZC to change the zoning from Forestry Range (FR) to General Commercial (CG). This property currently consists of one tax lot totaling 37.42 acres. The original application requested the zone change for the entire 37.42 acres. The applicant amended this request to delineate a five acre piece of property to be changed to commercial (CG) with the remainder to retain its Forestry Range zoning. This application also required an Exception Statement to Statewide Planning Goal 4 (Forestlands). The Exception Statement must justify why the property should be taken out of its current Forestry Range zoning designation.

2. NAMES OF THOSE INVOLVED:

A Hearing on this application were conducted on OCTOBER 26, 1999. The applicant was represented by Dixie Savage who appeared and entered testimony on behalf of the application. Kevin Russell represented the Planning Department. Members of the Board of County Commissioners who participated in this Hearing were: M. Steven West, Al Switzer, and William R. Garrard. 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 property is located 2,000 feet (0.4 mile) south of Keno Springs Road, on the east side of Bly Mt. Cutoff (4771 Bly Mt. Cutoff).

LEGAL DESCRIPTION: Por. SW ¼ of the NE ¼ Sec. 22, T. 38S., R. 11E
MTL# - R-3811-022A0-01600-000

4. FINDINGS OF FACT:

1. CLUP/ZC 5-99 is requested for a 5 acre portion of the applicant's property. The property is currently Forestry Range zoning. This request would isolate a commercial spot zone near the highway frontage.
2. The property is located outside the FEMA designated flood plain.
3. The site is located within a Goal 5 overlay (Low-Medium Density Deer Winter Range).
4. All commercial operations are deemed conflicting uses for properties identified inside of a Deer Winter Range (KCLDC Article 57.040F).

5. This property contains Class III soils (Fordney Loamy Fine Sand) as defined by the U.S. Department of Agriculture.

5. EXCEPTIONS DOCUMENTATION:

As this plan/zone change involved a resource zone (Forestry Range), an Exception Statement was required pertaining to Goal 4 (Forestlands). Based on the Goal Exception criteria defined by the Oregon Revised Statutes (197.732) the applicant must either prove that the property is already "committed" to the use, or state the "reasons" why the property should be exempt from the Goal 4 criteria. The applicant tried to demonstrate a "committed exception". However, due to the applicant's request to designate a spot zone of commercial zoning on a vacant portion of the property, a "committed" exception to Goal 4 could not be justified.

The property is located entirely within a Goal 5 Significant Resource Overlay (Med-Low Deer Winter Range). The Department of Land Conservation and Development submitted a letter (Exhibit E) stating that the applicant has failed to adequately justify and Exception to Goal 4 (Forest Lands).

7. COMPREHENSIVE PLAN CHANGE REVIEW CRITERIA – ARTICLE 48:

THE PROPOSED CHANGE IS SUPPORTED BY SPECIFIC STUDIES OR OTHER FACTUAL INFORMATION, WHICH DOCUMENTS THE PUBLIC NEED FOR CHANGE.

This request is to rezone five acres of the 37.42 acre lot that is currently Forestry Range. The requested change stems from an existing operating business that is not in compliance with the Klamath County Land Development Code.

This request conflicts with Article 57 of the Land Development Code. Any commercial endeavor is not allowed inside a designated Deer Winter Range. This property falls entirely within the Deer Winter Range.

THE PROPOSED CHANGE COMPLIES WITH ARTICLE 48 OF THE KLAMATH COUNTY LAND DEVELOPMENT CODE:

The following Goals are in compliance with Article 48 of the Klamath County Land Development Code:

Goal 1 – Citizen Involvement

Goal 11 – Public Facilities and Services

This property is serviced by the following public facilities and services:

- a. Road development and maintenance
- b. Water and sewer/septic services
- c. Fire protection (KCFD 5); and
- d. Power, telephone and other utilities

The following Goals are not in compliance with Article 48 of the Klamath County Land Development Code.

Goal 2 – Policy #6 of the Klamath County Comprehensive Plan states that “Zoning must be consistent with the land use plan map.” This proposal would create a “spot zone” of commercial zoning surrounded by forestry and rural residential.

Goal 4 - This proposal will create a commercial operation that would not be suitable for the existing property. The area currently has a very rural character, with rural residential and forestry zoned properties. This application is not in conformance with several Statewide and County Planning Goals (Goal 5, Goal 2, Goal 4), and therefore, forestry zoned land shall be protected.

Goal 5 - Policy #5 states that “The County shall encourage and support Federal and State management programs on lands that promote Goal 5 resources.” The applicant’s property lies entirely inside of a Low-Medium Deer Winter Range. Commercial activity is a conflicting use inside any designated significant resource overlay. This application would allow for a full time commercial operation, which does not comply with the Goal 5 policies.

THE PROPOSED CHANGE COMPLIES WITH THE OREGON STATEWIDE PLANNING GOALS AND ADMINISTRATIVE RULES.

This application does not comply with the Oregon Statewide Planning Goal 5 (Natural Resources), Goal 4 (Forest Lands), and Goal 2 (Land Use Planning). Furthermore, the application is inconsistent with the Goal 4 Exception criteria, which is designed to prove that the property is either irrevocably committed or physically developed (OAR 660-04-025 and 028). According to comments received by DLCD (Exhibit E) the applicant did not justify an exception to the Goal 4 criteria.

8. ZONE CHANGE REVIEW CRITERIA – ARTICLE 47:

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.

The proposed change does afford special privileges to the individual property owner not available to the general public. The applicant has established a business on the property in violation of the Klamath County Code (Violation Case#40-98). This property lies

entirely within a Deer Winter Range, and therefore any commercial operation is a conflicting use as defined under the Klamath County Code Article 57.040(F). In addition, creating a spot zone commercial development that is not consistent and harmonious with adjacent uses is not in the best interest of the general public.

THE PROPERTY AFFECTED BY THE CHANGE OF ZONE DESIGNATION IS ADEQUATED IN SIZE AND SHAPE TO FACILITATE ANY USES ALLOWED IN CONJUNCTION WITH SUCH ZONING.

The property is suitable in size and shape to facilitate the proposed uses, however, it does not comply with several Statewide Planning Goals and Policies required to justify the change.

THE PROPERTY AFFECTED BY THE PROPOSED CHANGE OF ZONE DESIGNATION IS PROPERLY RELATED TO STREETS AND ROADS AND TO OTHER PUBLIC FACILITIES AND INFRASTRUCTURE TO ADEQUATELY SERVE THE TYPES OF USES ALLOWED IN CONJUNCTION WITH SUCH ZONING.

This proposal is adjacent to Bly Mountain Cutoff, which is paved and maintained by Klamath County. The property falls within fire protection from KCFD #5. However, a fleet storage/trucking operation inside of a designated Significant Resource Overlay conflicts with the intent of the Deer Winter Range Overlay.

THE PROPOSED CHANGE OF ZONE DESIGNATION WILL HAVE NO SIGNIFICANT ADVERSE EFFECT ON THE APPROPRIATE USE AND DEVELOPMENT OF ADJACENT PROPERTIES; AND

The applicant is requesting the zone change from General Commercial to support his existing operations. This property was not designated for commercial uses and abuts rural residential uses to the north and west. A change in zoning would potentially increase the noise and impact to the adjacent properties.

THE PROPOSED CHANGE IS SUPPORTED BY SPECIFIC STUDIES OR OTHER FACTUAL INFORMATION, WHICH DOCUMENT THE NEED FOR THE CHANGE.

The submitted evidence and testimony indicates that this proposal is not in conformance with the policies and goals set forth by the State, Land Development Code, and Plan/Policies Document.

2. OTHER CONSIDERATIONS:

1. Letters of opposition to the proposal were submitted by neighboring property owners (Exhibits H & L). The letters voiced concerns regarding noise and impacts of the existing commercial operation.
2. This proposal is requesting the creation of a "spot zone" of commercial zoning, which is not consistent with the surrounding characteristics of the area.
3. The property lies entirely within a Goal 5 Significant Resource Overlay.

10. PLANNING COMMISSION RECOMMENDATION:

The Planning Commission has recommended DENIAL of this application. The Board acknowledges the Planning Commission's effort and involvement with the Planning process. The Board has fully considered the recommendation, Exhibits A-P, and testimony entered.

11. CONCLUSION AND ORDER:

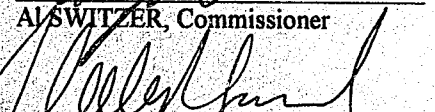
The Board of Commissioners found that the applicant did not meet the review criteria and upheld the Planning Commission recommendation of DENIAL. Proper notice of the application and the hearing was given. The intent of the Oregon Statewide Planning Goals has been met.

THEREFORE, pursuant to a motion made by William R. Garrard and seconded by Al Switzer, it is hereby ordered the Zone Change/Comprehensive Land Use Plan 5-99 and the Exception Statement to Goal 4 (Forestlands) is DENIED.


DATED this 14th day of November ~~7~~, 1999.


M. Steven WEST, Chairman


AL SWITZER, Commissioner


William R. GARRARD, Commissioner

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 the 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 rights.

Return to Commissioner's Journal

State of Oregon, County of Klamath
Recorded 11/09/99, at 8:15 a. m.
In Vol. M99 Page 44647
Linda Smith,
County Clerk Fee \$ 110