



Oregon

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October 3, 2007

TO: Land Conservation and Development Commission

FROM: Cora Parker, Acting Director
Jon Jinings, Central/Eastern Oregon Regional Representative

SUBJECT: **Agenda Item 5c, October 17-18, 2007, LCDC Meeting**

**REVIEW OF A DIRECTOR'S DECISION TO APPEAL TO THE
LAND USE BOARD OF APPEALS (LUBA)**

KLAMATH COUNTY

I. RECOMMENDATION

The director recommends, based on the information contained in this report, that the Commission authorize the department to proceed with the appeal of a Klamath County decision to the Land Use Board of Appeals. The department will file a Notice of Intent to Appeal with LUBA on October 4, 2007. It is necessary for the department to file the Notice of Intent to Appeal because the 21-day filing period will expire prior to the commission's next scheduled meeting.

II. CASE SUMMARY

This case involves two Klamath County decisions affecting about 120-acres in the southern portion of the Klamath Falls urban growth boundary. More specifically, the subject property is located in the northwest quadrant of the Washburn Way-South Side Expressway interchange.

The county's first decision converts the subject property from a Heavy Industrial Zoning District to a Light Industrial Zoning District. The county's second decision relies on the Planned Unit Development Article of the Klamath County Land Development Code¹ to approve an intensive

¹ The Planned Unit Development opportunity is not available in the Heavy Industrial zone. Furthermore, it is the department's understanding that the county has substantially relied on the following language to approve the conditional use/planned unit development proposal:

retail commercial and residential development strategy characterized by four large format retail commercial anchors, an assortment of smaller commercial uses and about 30-acres designated for residential activities. These proposals were bundled together and reviewed concurrently by the county.

The department provided written comments and appeared before the Klamath County Planning Commission. The department did not oppose the zone change from Heavy Industrial to Light Industrial. However, the department did express concerns with utilizing the county's planned unit development article to allow uses that could not otherwise be allowed in a Light Industrial Zone and that would conflict with the Industrial plan designation. The department advised that if the county believed that the subject property was particularly well suited for large format retail commercial and residential development the correct course of action would be to amend the applicable comprehensive plan designation and zoning. The department's comments also raised local review criteria and the Transportation Planning Rule. Please see the department's July 19, 2007 letter attached. Transportation issues were more thoroughly addressed by the Oregon Department of Transportation (ODOT) who also participated before the planning commission.

On August 1, 2007, the planning commission issued final orders approving the zone change and conditional use/planned unit development proposal. According to the Klamath County Land Development Code, the county planning commission has the authority to review and approve zone changes that do not involve a comprehensive plan amendment. Because the subject property in this case remained in an Industrial plan designation no subsequent approval was necessary by the county Board of Commissioners unless the case were to come before them on appeal.

The department was unable to meet the necessary time-frame to file an appeal of the planning commission decision to the Board of Commissioners. However, ODOT did file a timely appeal raising transportation related concerns as well as many of the issues raised by the department. The matter went before the Board on September 5, 2007.

The department was unable to attend the appeal hearing before the Board of Commissioners. The department did send an e-mail message supporting ODOT's positions and restating the

83.030 – REVIEW AUTHORITY

- C. Planned unit commercial and light industrial developments may be allowed in the CG, CT, and IL zones.

And

83.050 – PERMITTED USES

- B. The following uses are permitted in a planned unit commercial and light industrial development or mixed use developments:
 - 1. A permitted or conditional use in the underlying zone;
 - 2. Varied arrangement and location of commercial or industrial building types and designs;
 - 3. Single or multiple family dwellings if designed with adequate buffering.

department's concerns over approving uses that could not otherwise be approved in a Light Industrial zone that would be in conflict with the county's comprehensive plan.

On September 14, 2007, Klamath County adopted findings approving the proposed zone change and conditional use/planned unit development.

Pursuant to Commission rules (OAR 660-001-0220), the department notified the applicant and Umatilla County of its intent to appeal Umatilla County's decision. In the notice, the department indicated that an opportunity exists to appear before the commission to discuss the merits of the department's appeal. Parties were also informed about the factors in OAR 660-001-0230(3) upon which the commission will base its decision on whether or not direct the department to proceed with this appeal.

III. APPEAL FACTORS

To proceed with an appeal, the commission must base its decision on one or more of the following factors from OAR 660-001-0230(3):

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify state planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;
- (e) Whether the case advances the objectives of the agency's Strategic Plan;
- (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

IV. ANALYSIS

(a) Whether the Case will Require Interpretation of a Statewide Planning Statute, Goal or Rule

This case involves the interpretation of Statewide Planning Goal 2 (Land Use Planning), because the decision approves uses inside an urban growth boundary that should be fully coordinated with the city of Klamath Falls and Statewide Planning Goal 9 (Economic Development), because the decision effectively converts property from an industrial designation without addressing the provisions of OAR Chapter 660, Division 9. The decision also involves Goal 12 (Transportation) through the Transportation Planning Rule (TPR)(OAR 660-012-0060) because the county has approved the zone change and PUD without fully addressing the transportation impacts of the allowed uses as required by the TPR.

(b) Whether a Ruling in the Case will Serve to Clarify State Planning Law

A ruling in this case will help to explain the relationship between local comprehensive plans and implementing ordinances. If the county's interpretation is correct nearly everything about the local program is rendered meaningless because practically any use could be allowed in any area subject to a planned unit development regardless of the comprehensive plan and zoning

designations. This position is contrary to the department's understanding of how comprehensive plans and implementing ordinances operate, as well as, the role of planned unit development opportunities in local planning programs.

A ruling in this case would also help clarify the extent and timing of transportation analysis that must be completed before a zone change is authorized and the extent to which a local government may defer required TPR analysis to a subsequent decision, and the appropriate terms of such a deferral.

(c) Whether the Case has Important Enforcement Value

Not at this time. Although the department has observed other conversion activities in this portion of the Klamath Falls urban growth boundary we are not yet ready to recommend enforcement procedures.

(d) Whether the Case Concerns a Significant Natural, Cultural or Economic Resource

The 120-acres in question is not considered agricultural or forest land. The department is not aware that the property is inventoried as a significant natural, cultural or economic resource.

(e) Whether the Case Advances the Objectives of the Agency's Strategic Plan

This appeal advances the objectives of the Agencies Strategic Plan by helping to ensure that large industrial sites are not unduly converted to other uses.

(f) Whether there is a Better Way to Accomplish the Objective of the Appeal, such as Dispute Resolution, Enforcement Proceedings or Technical Assistance

No alternative method of resolving the issues has been identified.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the Commission support the Director's recommendation and proceed with an appeal of the Klamath County land use decision.

Proposed Motion: I move that the Commission approve a department appeal of the subject decision from Klamath County to the Land Use Board of Appeals because the information included in this report demonstrate that OAR 660-001-0230(3) (a), (b) and (e) apply.

Alternative motion: I move the Commission not approve an appeal of the subject decision from Klamath County because _____.

Attachments: Klamath Final Order for File Numbers ZC 10-07 & CUP 22-07
Shasta View Shopping Center Conceptual Plan
DLCD E-mails Dated September 5, 2007
ODOT Statement of Appeal Dated August 13, 2007
DLCD Comment Letter dated July 19, 2007